TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 345

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, SUED IN THE NAME OF THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

vs.

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY OF GROTON IRON WORKS, AND ISAAC SIEGEL AND JOHN M. P. THATCHER, AS ANCILLARY RECEIVERS OF UNITED STATES STEAMSHIP CO., INTERVENORS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 27, 1929
CERTIORARI GRANTED OCTOBER 21, 1929

(34476)

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1 In Superior Court of New London County

GROTON IRON WORKS, PLAINTIFF

AGAINST

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, defendant

February, 1921, term—No. 2345

Substitute complaint

The plaintiff above named, by Robinson, Robinson & Cole, its attorneys, for this its substitute complaint respectfully shows and alleges:

First. The plaintiff above named is a corporation organized and existing under and by virtue of the laws of the State of Maine, and at all the times hereinafter mentioned has had, and still has, its principal place of business in the county of New London, State of Connecticut. That the plaintiff was primarily organized for the purpose of building wooden and steel vessels for the defendant to be operated by it in the commerce of the United States of America as a part of the war policy during the recent World War.

2 Second. That the defendant above named is a corporation organized and existing under and by virtue of the laws of the District of Columbia and during all the times hereinafter mentioned has maintained, and still maintains, an office and place for the regular transaction of business in the county of New London, State of Connecticut. That the defendant was organized for the purchase, construction, equipment, lease, charter, maintenance and operation of merchant vessels in the commerce of the United States.

Third. That as a part of its policy of construction of merchant vessels, the defendant herein, on or about the 15th day of June, 1917, entered into a certain contract in writing under seal, with the plaintiff wherein and whereby it was agreed between the parties thereto that the plaintiff would construct for the defendant twelve (12) wooden cargo carrying hulls, suitable for cargo carrying steamers, but without propelling machinery and equipment and auxiliaries, and, in accordance with the Ferris standard drawings and specifications, made a part of said contract and for which construction of hulls the defendant agreed to pay to the plaintiff the sum of three hundred thousand dollars for each of such hulls in ten equal progress payments upon completion of certain parts of the work of construction to be certified by the inspector employed by

the defendant. That the said contract contained other provisions wherein and whereby the defendant assumed and agreed to pay any increase in the cost of lumber, labor and materials and limited the plaintiff to the purchase of lumber from the defendant. The defendant by the terms of said contract, reserved unto itself the right to make alterations, omissions, additions or substitutions in the plans for construction and agreed to make the plaintiff proper com-
3 pensation therefor. That a copy of said contract is hereto annexed and marked "Exhibit A" and made a part hereof with the same force and effect as if herein fully set forth.

Fourth. That the plaintiff herein entered upon the construction of said hulls as provided in said contract, Exhibit A, and completed the construction of two of said hulls and partially constructed six other of said hulls prior to September 30, 1918. That during the course of said construction the defendant herein directed the plaintiff to pay a very much higher rate of wages to its employees than was being paid at the date of said contract, Exhibit A; that the defendant appropriated to its own use large quantities of lumber and materials consigned to plaintiff for use in the construction of said hulls, thereby delaying the construction work; that the defendant directed the plaintiff to make numerous changes in the construction of said hulls whereby the cost of said construction was largely increased; that the defendant placed an unreasonable number of inspectors in the plant of the plaintiff at Noank, where said construction work was being carried on, and that said inspectors unreasonably interfered with the work of construction, thereby delaying the final delivery of completed hulls and rendering the cost of construction to the plaintiff far in excess of what could have been reasonably or properly anticipated at the time of making said contract, Exhibit A, and of what said cost would have been except for said acts of the defendant and for which increase in cost the plaintiff was and is entitled to proper compensation. That under directions from the inspectors of the defendant, the plaintiff
4 was compelled, at a great cost and expense, to materially enlarge its plant and equipment. That the plaintiff constantly and continuously complained to the defendant of the increased cost of construction arising from said causes and other reasons and demanded of the plaintiff proper compensation therefor. That the defendant did pay to the plaintiff small sums on account of such increased cost and from time to time promised and agreed, in consideration of the plaintiff continuing and hurrying the work being done according to such enlarged and changed plans to make to the plaintiff full and proper compensation for all of said increased costs. That notwithstanding its said promises and agreements, the

defendant did not make just proper or sufficient allowance to the plaintiff therefor.

Fifth. That the plaintiff and defendant, each realizing the futility and impossibility of continuing the construction of said hulls under said contract, Exhibit A, as it had been modified and changed by the numerous orders and directions of the defendant, on or about September 30th, 1918 (Sept. 18), entered into another contract in writing under seal, dated on that day, wherein and whereby it was provided, among other things, that said contract, Exhibit A, should be and was cancelled as to the last four of the hulls to be constructed thereunder, and that defendant should pay to the plaintiff the sum of four hundred and fifty thousand dollars for each of the first four hulls to be constructed pursuant to said contract, Exhibit A, two of which hulls had been delivered to the defendant, and four hundred thousand dollars for each of the second four hulls to be constructed pursuant to said contract, Exhibit A, and in consideration of said agreement to pay said additional sums, the plaintiff waived all damages and all claims of every kind and character then due it or alleged to be due it on said September 30, 1918, and agreed to complete the construction of said six hulls then undelivered and did thereafter complete and deliver two of said hulls and partially completed the other four of said hulls. The defendant further agreed in said contract to pay any further increases in the cost of lumber, labor and materials and to make proper compensation for all further alterations, omissions, additions or substitutions in the plans for construction of said hulls. That a copy of said contract is hereto annexed and marked "Exhibit B" and made a part thereof with the same force and effect as if herein fully set forth.

Sixth. That in consideration of the plaintiff entering into said contract, Exhibit B, the defendant agreed with the plaintiff that it would forthwith take all of its inspectors out of the plant and yard of the plaintiff and accept the hulls when completed on the inspection and approval of the American Bureau of Shipping, thereby greatly reducing the cost of construction.

Seventh. That, notwithstanding its said agreements, the defendant refused to make the additional payments as they became due to the plaintiff, refused to remove its inspectors and to furnish materials required, continued to appropriate to its own use lumber and materials consigned to the plaintiff and to make changes in the plans for construction thereby and otherwise unreasonably interfering with the plaintiff in its work of construction and rendering the cost of such construction far in excess of what the plaintiff could have reasonably anticipated at the time of making said con-

tracts, and of what said cost would have been but for said acts of the defendant.

6 Eighth. That on or about and during the months of February and March, 1919, the defendant directed the plaintiff to suspend all work on hulls then not delivered, thereby throwing the plaintiff's working organization out of employment, leaving its yard encumbered with said uncompleted hulls, and rendering the plant of the plaintiff practically useless for all other work and the large investment of the plaintiff therein so that it could not be properly and reasonably utilized and realized upon, which said suspension continued until April 3, 1920, as more particularly hereinafter set forth, except as to a small amount of work done in completing and delivering one additional hull.

Ninth. That as a result and because of the failure of the defendant to make the payments which were due to the plaintiff under and pursuant to the aforesaid contracts, and other contracts between the plaintiff and defendant, as will more fully hereinafter appear, the plaintiff became indebted in large sums to persons, firms, and corporations for materials and supplies furnished for use in connection with said contracts, and on March 20, 1919, temporary receivers of the plaintiff were duly appointed by this court and thereafter and on April 7, 1919, permanent receivers were duly appointed. That due to the insistence of defendant and because of its expressed intention to take over the affairs of this plaintiff, unless its wishes were carried out, one Frederick Conlin, the then assistant district manager of the North Atlantic district for the defendant, was appointed one of the two receivers of the plaintiff and thereafter and until April 3, 1920, as more fully hereinafter appears, had charge of the

7 construction work being done under plaintiff's contracts and acted upon and subject to the orders and directions of the defendant. That, at the time of the appointment of said receivers, plaintiff was a solvent corporation and was entitled to collect of and from the defendant a sum in excess of all liabilities. That, acting upon the order of the defendant, the said receivers made little, if any, effort to collect the amounts due from the defendant but on the contrary continued the construction of vessels for the defendant in a wasteful and extravagant manner, thereby depleting the property of the plaintiff.

Tenth. That plaintiff, realizing the excessive cost of construction under said receivers and that the plant of the plaintiff was being operated for the benefit of the defendant, without regard to the rights of creditors and of this plaintiff, and that the assets of the plaintiff were being unreasonably dissipated, and in orders to protect its creditors and property, by reasonably completing the work to be

done under the contracts aforesaid and by collecting the sums justly due to it from this defendant, and by making new contracts with other parties for the construction of vessels so that the plants could be kept busy and earn profits, all of which was fully stated to defendant, on or about March 26, 1920, entered into a certain contract in writing and under seal, dated on that day, with the defendant, to become effective upon the redelivery to plaintiff of possession, custody, and transfer of ownership of the assets of plaintiff then in the hands of the receivers aforesaid pursuant to due order of this court. That proper orders were duly made and entered in said receivership action and said assets were, except in so far as,
8 notwithstanding the orders of this court, hindered and blocked by the defendant, delivered and transferred by said receivers to this plaintiff on April 3rd, 1920, and have since said date been in possession of plaintiff. That pursuant to the terms of the said agreement the aforesaid contracts, Exhibit A and Exhibit B, were agreed to be cancelled as respects the three wooden hulls partially completed in consideration of the award to the plaintiff of the three uncompleted hulls, one complete Ferris type wooden ship to be selected by plaintiff from a list to be furnished by defendant and one Ferris type hull to be selected in the same manner and one bill of material, No. 500, being the full equipment required for said hull. That the said agreement further provided that the reconciliation of the accounts of the plaintiff in respect to the construction of wood vessels, as aforesaid, with those of the owner, which had been in progress between the receivers aforesaid and the New York district office of defendant during the then past four months should be continued with respect to items upon which a reconciliation or agreement had not been reached, and any amount found due to the plaintiff in respect of any of said hulls, the uncompleted hulls to be paid for on the basis of the degree of completion of each, should be paid to the plaintiff and any amount due the defendant should be paid by the plaintiff or deducted from any other moneys due the plaintiff from defendant. That a copy of said contract is hereto annexed and marked "Exhibit C" and made a part hereof with the same force and effect as if herein fully set forth.

Eleventh. That notwithstanding its agreement as aforesaid, the defendant failed and neglected to furnish a list of vessels and
9 hulls and when the plaintiff designated a vessel which it would take, refused to deliver the said vessel or any vessel or hull or any material so that the consideration for said cancellation was not delivered to or made available to the plaintiff or possible of realization upon by it; that since the time when the defendant should have made said deliveries to complete said cancellation it has

offered Ferris type hulls and vessels for sale in such numbers and at such reduced prices that they are of no substantial market value. That although the plaintiff immediately and frequently requested the reconciliation of said account, the defendant delayed any negotiations and refused to make any reasonable or proper compensation to the plaintiff for the work done and damages sustained; that the defendant has wholly failed in the doing of the things to be done by it as the consideration for said cancellation, and the agreements of the defendant contained in said Exhibit C have become worthless to the plaintiff, and it has, by the failure of the defendant to keep its said agreements, been prevented from utilizing the vessels which were to be delivered and from keeping its plant in operation and reestablishing its business and credit which was destroyed by the violations of the agreements by the defendant.

Twelfth. That while the plaintiff was engaged in the performance of the work pursuant to the 1st contract, Exhibit A, and at the request and solicitation of the defendant in order to aid it in the construction of a merchant marine of the United States, and on or about the 11th day of August, 1917, the plaintiff entered into a contract in writing under seal, dated on that day, with the defendant, wherein and whereby it was provided, that the plaintiff should construct, in accordance with defendant's drawings and specifications made a part of said contract and under the rules and regulations of the American Bureau of Shipping, six steel cargo carrying vessels of the Robert Dollar type of 8,800 dead-weight tons each complete with propelling machinery, auxiliaries, and equipment and for which the defendant agreed to pay the sum of $1,364,000 each, the said payment to be made by the defendant furnishing certain steel material at prices stated in said contract and the balance in percentage progress payments upon completion of certain parts of the work of construction to be certified by the inspector employed by the defendant. That the said contract contained other provisions wherein and whereby the defendant assumed and agreed to pay any increases in the cost of materials, equipment and labor and limited the plaintiff, in the purchase of equipment and material, without the written consent of the defendant. The defendant by the terms of said contract reserved unto itself the right to make alterations omissions, additions, or substitutions in the plans for construction and agreed to make to the plaintiff reasonable payment therefor That a copy of said contract is hereto annexed and marked "Exhibit D" and made a part hereof with the same force and effect as if herein fully set forth.

Thirteenth. That for the purpose of carrying out the terms of said contract, Exhibit D, and with the full knowledge of the de

fendant, the plaintiff was obliged to and did construct at Groton, in the county of New London and State of Connecticut, a complete six-way shipbuilding plant with complete shops and equipment, and forthwith entered upon the construction of said vessels.

11 Fourteenth. That continuously after the making of said contract the defendant assumed and was in control of the shipbuilding industry of the United States and constructed or caused to be constructed numerous and large shipbuilding plants and assumed control of all shipbuilding materials and plant equipment, thereby hindering and delaying the plaintiff not only in the construction of its plant and the building of vessels but also in the obtaining of plant and ship materials and by orders issued by it compelled the plaintiff to pay greatly increased wages to labor but refused to make to the plaintiff due to compenstion, for such increased cost of plant and ship construction notwithstanding the said contract, and appropriated to its own use materials and supplies ordered by the plaintiff and delayed and refused to make payments for materials purchased by the plaintiff.

Fifteenth. That while the plaintiff was engaged in the performance of the work pursuant to the contract, Exhibit A, and in the construction of its plant at Groton and in the performance of the work pursuant to the contract, Exhibit D, and at the request and solicitation of the defendant and upon its promise to immediately make payment of the large amounts which had become due to the plaintiff under said contracts over and above the said progress payments for additional services and increased costs, the plaintiff on or about the 20th day of April, 1918, entered into another certain contract in writing under seal, dated on that day, with the defendant wherein and whereby it was provided that the plaintiff should construct, in accordance with defendant's drawings and specifications made a part of said contract and under the rules and regula-

12 tions of the American Bureau of Shipping and or Lloyds, six steel single-screw cargo vessels of the Moore & Scott type of 9,400 tons dead-weight carrying capacity with complete propelling machinery, auxiliaries, and equipment and for which the defendant agreed to pay the sum of $1,710,800 each, the said payment to be made by the defendant furnishing certain steel materials and equipment at prices stated in said contract and the balance to be paid by the defendant, from an account to be maintained by it for that purpose, by direct payments for materials and supplies delivered at the plant of the plaintiff and for labor expended on the vessels. That the said contract contained other provisions wherein and whereby the defendant assumed and agreed to pay any increases in the cost of materials, equipment, labor, and freight. The defendant,

by the terms of said contract, reserved unto itself the right to make alterations, omissions, additions, or substitutions in the plans for construction and agreed to make reasonable payment therefor to the plaintiff. That a copy of said contract is hereto annexed and marked "Exhibit E" and made a part hereof with the same force and effect as if herein fully set forth.

Sixteenth. That each of said contracts Exhibits A, D, and E contained provisions wherein and whereby the plaintiff was compelled to maintain full and complete insurance upon all work being done for the defendant. That notwithstanding the said provisions, the defendant wrongfully declined to let the plaintiff take out such insurances but carried the risk itself, charging the plaintiff with an excessive and unreasonable rate therefor in violation of said contracts and in violation of the insurance laws of the State of Connecticut.

13 Seventeenth. That the plaintiff entered upon the performance of said contract Exhibit B and ordered materials and started the construction of vessels.

Eighteenth. That on or about and during the month of February, 1919, the defendant directed the plaintiff to suspend all work on the last three hulls to be constructed under said contract Exhibit E, notwithstanding the fact that the plaintiff had acquired practically all materials for said vessels and entered into numerous subcontracts for work of various kinds in connection with said vessels.

Nineteenth. That the defendant compelled the plaintiff under threat of embarrassing the plaintiff by an unjustifiable cancellation of said contracts to acquire and build houses for employees engaged at its plants, whereby the plaintiff was obliged to and did expend large sums of money for which it has received no compensation from the defendant.

Twentieth. That in the course of the performance of said contracts the plaintiff became heavily indebted to various persons, firms, and corporations for amounts properly due and payable by the defendant either to the plaintiff or directly to said creditors, but the defendant declined to make said payments, although in March, 1919, the defendant issued and delivered to plaintiff checks drawn to the order of some of said creditors, but that the said checks could not be used because the account of the defendant upon which said checks were drawn was without sufficient funds with which to meet said checks.

Twenty-first. That by reason of the failure and neglect and refusal of the defendant to make payment of the amounts
14 properly due and payable by it as aforesaid and for which demand was repeatedly made, the receivership of the plaintiff

was brought about as set forth in paragraph ninth hereof. That during a large part of said receivership the plaintiff was denied all information concerning the said contracts and the operations of said receivers by them, and the hirelings of the defendant refused all information to the plaintiff, and said receivers were completely dominated and controlled by various employees of the defendant.

Twenty-second. That by reason and because of the defaults of the defendant in making payments of sums due the plaintiff in order to continue the performance of said contracts was forced to borrow the sum of $1,800,000 from the defendant and to give as security therefor two mortgages conveying to the defendant a lien on the plant of plaintiff subject only to a first mortgage of $30,000, which said mortgages by their terms were payable out of the last progress payments and profits of said two construction contracts.

Twenty-third. That the said contract Exhibit C, made for the reasons aforesaid, contained further provisions relating to said contracts Exhibits D and E, and provided, among other things, that the aforesaid mortgages both as to principal and interest should be extended to July 1st, 1921; that the plaintiff should be paid $500,000 as compensation for the cancellation of the last three of the vessels to be constructed under the said contract Exhibit E and the sum of $16,155,648 for the construction of the nine vessels remaining, of which six had already been completed and delivered to or seized by the defendant and the other three of which said vessels the plaintiff agreed to complete and deliver, one on each of the following dates, May 5, 1920, June 5, 1920, and July 5, 1920. The said contract further provided that the defendant should take back from the plaintiff any material delivered for use in constructing and outfitting the vessels under contract Exhibits A, D, and E not used and credit the plaintiff with the cost thereof, and that all payments theretofore made by the defendant to the plaintiff should be charged against the contract price subject to proper allowance for returned materials and cancellation. The said contract further provided that the defendant should pay, through its district office, the actual cost of completing the said vessels, up to but not exceeding the said sum of $16,155,648 and the said cancellation allowance of $500,000 and proper credits for returned materials and equipment and should make said payment direct to the vendors or manufacturers of material and equipment for ship construction purposes; and in general direct to creditors, except that payment should be made directly to the plaintiff for pay rolls and overhead expenses.

Twenty-fourth. That forthwith after April 3, 1920, upon which date the plaintiff was repossessed of its said plants as aforesaid, the defendant took possession of large quantities of surplus material

and began to remove the same from the plants of the plaintiff, and prior to April 17, 1920, had taken control of such material of the value of several hundred thousand dollars.

Twenty-fifth. That notwithstanding its contracts as aforesaid the defendant, at its New York district office, refused to make proper entries upon its accounts showing the extension of time of payment of the interest on the mortgages as aforesaid and refused to make any proper credits for the surplus material and supplies taken
16 by the defendant and to make other proper adjustments of the accounts, but the said district office of the defendant wrongfully and maliciously and in order to embarrass and harass the plaintiff and to again place the plants of the plaintiff in the hands and under the control of the said Conlin, a former district manager of the defendant and associate of the hirelings of the defendant in said district office, did on April 17, 1920, notify the plaintiff in writing that it would not make any further payments to the plaintiff or for its account and did on April 26, 1920, apply to one of the judges of this court to reinstate the said receivers. That at the time of said notice and application, and all times since, the defendant was and has been in default on its said contracts and properly indebted to the plaintiff in large sums. That plaintiff has repeatedly requested the defendant to make proper entries upon its books of account, but the defendant has refused. That, notwithstanding its said contracts, the defendant has refused to pay for large quantities of materials and supplies used on said vessels and has delayed and hindered the plaintiff in finishing the said vessels by failing to pay for materials and supplies ordered by the plaintiff with the actual approval of the defendant and has thereby rendered the cost of completing said vessels, which have all been delivered by the plaintiff, far in excess of what could reasonably and properly have been anticipated and expected by the plaintiff, and of what said costs would have been but for said acts and defaults of the defendant, and has caused the plaintiff to expend large sums for counsel fees, accountants, bookkeepers, etc.

That the defendant was fully advised and informed of the condition of the plaintiff at the time of making the contract of March 26, 1920, and that funds to carry on the construction of
17 said vessels must be furnished by it up to the contract price and that the furnishings of said funds were essential and necessary to enable the plaintiff to do the work on said vessels and to successfully conduct its plants. That, notwithstanding its said contract and knowledge, the defendant, through its New York district office and other employees, repeatedly and continuously refused to carry out the said contract, and the defendant, having been balked

in its efforts to again secure possession of the plaintiff's plants, through its former district manager as receiver and from April 29, 1920, to the date of final delivery of said vessels, compelled the plaintiff to continue the construction, not in accordance with said contracts but according to the whim and fancy of the defendant as expressed in resolutions of its board of trustees and in the directions of its hirelings. In so far as said contract Exhibit C purports to cancel or modify the obligations of the defendant under said contracts Exhibits A, B, D, and E there has been a complete failure of consideration for such cancellation or modification by and because of the defaults of the defendant in carrying out its obligations under said contract Exhibit C.

Twenty-seventh. That, except as prevented by the defendant, the plaintiff has faithfully and carefully completed all of said contracts on its part to be performed.

Twenty-eight. That the defendant, through its defaults as aforesaid, has greatly impaired the credit and business of the plaintiff; has caused the plaintiff to expend excessively large sums of money upon the construction of said vessels under said contracts for which the defendant is liable; has wrongfully compelled the plaintiff to carry out orders not embraced in said contracts under threat of embarrassing the plaintiff by an unjustifiable cancellation of said contracts and further application for receivership and notwithstanding the said contracts and the repeated promises to reimburse the plaintiff for all of such excessive costs and expenses, the defendant has repeatedly and continuously defaulted in the performance of each and every of the aforesaid contracts; and has neglected and refused to carry out each and all of its undertaking contained in said contract Exhibit C whereby the plaintiff has been damaged in the sum of $13,000,000.00.

Wherefore, the plaintiff claims $13,000,000.00 damages.

ROBINSON, ROBINSON & COLE,
Attorneys for Plaintiff.

EDWARD E. BLODGETT,
GEO. M. BURDITT,
Of Counsel.

SUMMARY OF EXHIBITS ATTACHED TO SUBSTITUTE COMPLAINT

Exhibit A—Contract No. 15–W. H., June 15, 1917.
Exhibit B—Supplementary contract to contract of June 15, 1917, dated Sept. 30, 1918.
Exhibit C—Contract of March 26, 1920.

Exhibit D—Stipulation and contract of August 11, 1917, providing for 6 steel steamers (apparently the contract to which the stipulation refers). Stipulation is undated and is as follows:

This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision, satisfactory in form and terms
19 to the United States Shipping Board Emergency Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the contractor or by subcontractors and/or providing for the payment of extra compensation for overtime work, will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
(Sgd.) By W. L. CAPPS.
GROTON IRON WORKS,
By H. F. MORSE, *V. P.*

Exhibit E—Contract dated April 20, 1918, for 6 steel steamers with instrument annexed signed by U. S. Steamship Company guaranteeing performance of the contract.

IN UNITED STATES DISTRICT COURT, DISTRICT OF CONNECTICUT

GROTON IRON WORKS

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Motion to dismiss substitute complaint

FEBRUARY 28, 1921.

The above-named defendant, especially appearing for the purpose of this plea and motion, and not otherwise, says that this court has no jurisdiction of this case for the following reasons:

1. The defendant is a corporation organized and existing
20 by virtue of certain laws of the United States of America, and was so organized and now exists in pursuance of and obedience to the provisions of the act of Congress approved September 7, 1916, known as the "shipping act, 1916," and of the incorporation laws of the District of Columbia as enacted by Congress, the defendant having been so organized on April 16, 1917.

2. The defendant is the corporation authorized and described by said "shipping act, 1916," and especially section eleven thereof.

All the shares of stock of the defendant corporation are now
have at all times been held and owned by the United States
nerica.

The defendant corporation, at all times mentioned in the plain-
substituted complaint, has been, in all respects, administered,
ged, and conducted by the United States of America as an
mentality or agency of the United States Government, and
ially as an instrumentality for the prosecution of the war
st Germany, which commenced on or about the 6th day of
, 1917, and as a means of aiding, promoting and executing the
and governmental purposes and functions incidental thereto.
Said administration, management, and conduct of the defendant
ration is, and has at all times been carried on by the United
s of America in the exercise of its constitutional powers and
rsuance of acts of Congress and Executive orders of the Presi-
including the aforesaid "shipping act, 1916," the urgent
encies appropriations act, approved June 15, 1917, and other
amendatory of said laws, providing for the construction and
ment of "vessels suitable * * * for use as naval auxiliaries
my transports, or for other naval or military purposes," and
priating large sums of money of said United States of Amer-
ica for expenditure in the construction, repair, alteration, and
equipment of vessels for the aforesaid purposes of the United
States of America under the direction of the President and
e United States Shipping Board, the members of which are
and have, at all times, constituted the board of trustees of the
dant corporation, and the President having, from time to time,
xecutive order, delegated to said United States Shipping Board
o the defendant all power and authority vested in said Presi-
by said acts of Congress in relation to the above described
nmental functions and purposes.

In the execution by the defendant of the aforesaid purposes and
ions of the United States of America, under said authority and
ion, the defendant as such agent or instrumentality entered
the several contracts mentioned in the plaintiff's complaint,
ll acts of the defendant done and performed in respect to the
rmance of said contracts or complained of or intended by the
iff in its allegations made in said complaint were acts of the
d States of America and of the President thereof, performed
e defendant in its capacity as an agent and instrumentality of
United States Government, as herein set forth.

This action is in substance and effect an action against the
d States of America, and is not maintainable in this court
st this defendant, the rights and remedies of the plaintiff

claimed in this action, if any exist, being enforceable, if at all, in the Court of Claims.

Wherefore, the defendant prays that this action be dismissed.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
By ALLAN K. SMITH,
Its Attorney, Specially Appearing as Aforesaid and as on File.

22 In United States District Court

[Title omitted].

Order denying motion to dismiss complaint

This action having been instituted in the Superior Court of the State of Connecticut, county of New London, by the Groton Iron Works, the plaintiff, against the United States Shipping Board Emergency Fleet Corporation, the defendant, and having been removed into this court by the defendant and the plaintiff in this court having made its motion to remand the action to the Superior Court on the ground that this court is without jurisdiction as appears by plaintiff's motion to remand as on file and the defendant appearing specially for that purpose having filed its plea to the jurisdiction and motion to dismiss as appears by "plea of the defendant and motion to dismiss" as filed, said matters were argued by counsel and submitted to the court, and the court being fully advised finds the plaintiff's said motion to remand not well taken and overrules and denies the same; and the court on the authority of the decision of the United States Circuit Court of Appeals for the Second Circuit in the case of matter of Eastern Shore Shipbuilding Corporation, Bankrupt, decided June, 1921, finds the said "plea of the defendant and motion to dismiss" not well taken and overrules and denies the same.

July 15, 1921.

EDWIN S. THOMAS, *Judge.*

23 In United States District Court

[Title omitted.]

Order transferring action to equity

Upon the stipulation of the parties hereto, dated July 20, 1923, and filed herein, and upon the filing of a bill of complaint in substitution for the substituted complaint, the filing of an answer thereto and a reply on this date, and upon proceedings heretofore had herein, it

is ordered that this action be and it hereby is transferred to the equity side of this court.

Dated, July 20, 1923.

HENRY W. GODDARD, *U. S. D. J.*

24 In United States District Court

In Equity No. 1669

Bill of complaint

To the honorable judge of the District Court of the United States for the District of Connecticut:

P. LeRoy Harwood, as trustee in bankruptcy of Groton Iron Works, the complainant above named, brings this, his bill of complaint, against United States Shipping Board Emergency Fleet Corporation, and alleges upon information and belief as follows:

1. Groton Iron Works is a corporation duly organized and existing under and by virtue of the laws of the State of Maine, and at all the times hereinafter mentioned had, and still has, its principal place of business in the county of New London, State of Connecticut, and was organized primarily for the purpose of building wooden and steel vessels for the defendant, to be operated by it in the commerce of the United States of America as a part of its war policy during the recent World War.

2. On or about the first day of December, 1921, Groton Iron Works was duly adjudicated a bankrupt in this court, and thereafter, and on or about the 19th day of December, 1921, complainant, P. LeRoy Harwood, was duly appointed trustee in bankruptcy of Groton Iron Works and has duly qualified and is now acting
25 as such trustee and is in possession of all the property and assets of Groton Iron Works.

3. The defendant above named is a corporation duly organized and existing under and by virtue of the laws of the District of Columbia, and during all the times hereinafter mentioned maintained an office and place of business in the county of New London, State of Connecticut, and was organized to purchase, construct, equip, lease, charter, maintain, and operate vessels in the commerce of the United States of America.

4. The matter in controversy in this case exceeds, exclusive of interest and costs, the sum or value of three thousand dollars ($3,000), and arises under the laws of the United States—to wit, the act of Congress of September 7, 1916, known by the statutory name of "shipping act, 1916," the shipping fund provisions of the act of Congress of June 5, 1917, the act of Congress of June 5, 1920, known

as the "merchant marine act, 1920," and under other laws of the United States relating to the subject matter of this suit.

5. This action has been pending in this court and on the law side thereof and was duly transferred to the equity side of this court pursuant to an order made and entered herein on the 20th day of June, 1923, which said order duly granted leave to the complainant to file this bill of complaint.

I

6. As part of its policy of construction and operation of merchant vessels, defendant on or about the 15th day of June, 1917, entered into a certain contract in writing under seal with Groton Iron Works, in which Groton Iron Works agreed to construct for the defendant twelve (12) wooden cargo-carrying hulls without propelling
26 machinery, equipment, and auxiliaries, in accordance with the terms and conditions and specifications of said contract, and for which construction defendant agreed to pay Groton Iron Works the sum of three hundred thousand dollars ($300,000) for each of said hulls, in the manner provided in said contract. A copy of said contract is hereto annexed and made part of this bill of complaint and marked "Exhibit 1."

7. Thereafter Groton Iron Works commenced the construction of said hulls in accordance with said contract Exhibit 1 and completed and duly delivered to this defendant two (2) of said hulls and partially constructed six (6) other of said hulls prior to September 30, 1918, and duly performed all the terms of said contract on its part to be performed except as prevented by the acts of this defendant or except as waived by defendant.

8. Thereafter, and on or about September 30, 1918, Groton Iron Works duly entered into a further contract with the defendant in writing and under seal supplemental to and in modification of said contract of June 15, 1917, Exhibit 1, wherein Groton Iron Works and the defendant agreed, among other things, that said contract Exhibit 1 should be and was canceled as to the last four (4) of said wooden hulls to be constructed thereunder, and that defendant would pay Groton Iron Works the sum of four hundred and fifty thousand dollars ($450,000) for each of the first four (4) of the said hulls and the sum of four hundred thousand dollars ($400,000) for each of the second four (4) hulls to be constructed pursuant to said contract
Exhibit 1 and the contract supplemental thereto dated Sep-
27 tember 30, 1918. A true copy of said contract of September 30, 1918, is attached to this bill of complaint and marked "Exhibit 2."

9. Thereafter Groton Iron Works proceeded with the construction of said hulls in accordance with the terms of said contract Exhibit 1

and said supplemental contract Exhibit 2, and duly completed and delivered to the defendant three (3) of the remaining six (6) of said wooden hulls and partially completed the other three (3) hulls, and duly performed all the terms and conditions of said contracts on its part to be performed, except as prevented by the acts of the defendant.

10. By the terms and conditions of said contract Exhibit 1 and contract Exhibit 2 supplemental thereto, Groton Iron Works was required to purchase and obtain all material to be used in the construction of said hulls from or through defendant, and defendant agreed, among other things, to pay the Groton Iron Works for all increases in the cost of lumber, labor, and materials required in the performance of said contract and to make proper compensation to Groton Iron Works for all alterations, omissions, additions, and substitutions in the plans for construction of said hulls ordered by the defendant in writing, and to pay or give credit to Groton Iron Works for all material belonging to Groton Iron Works which had been used or purchased by the defendant or ordered by the defendant sent to other yards.

11. After September 30, 1918, and while engaged in the construction of the wooden hulls under said contracts Exhibits 1 and 2, and prior to March 26, 1920, Groton Iron Works was compelled to
28 and did expend large sums of money by reason of increased cost of labor, material, and equipment imposed by the defendant or for which the defendant was responsible and by reason of alterations, additions, omissions, and substitutions in the plans for construction of said vessels ordered or approved by the defendant in writing.

12. Notwithstanding its agreements, the defendant failed and refused to pay Groton Iron Works the amounts due under said contracts, including the increased cost of labor, material, and equipment and the extra costs due to changes in the plans of construction ordered by the defendant in writing and other expenses incurred by Groton Iron Works in connection with said construction in excess of what said Groton Iron Works could reasonably have anticipated at the time of making said contracts and of what said cost would have been but for the acts of the defendant, and in other ways failed to reimburse and compensate Groton Iron Works as provided in said contracts, or to allow Groton Iron Works proper credit therefor.

13. The defendant made to Groton Iron Works at various times and in various ways partial payments in cash and material under and on account of said contracts Exhibits 1 and 2.

14. The exact amount of said partial payments and the exact amounts of money advanced by Groton Iron Works as above alleged and the balance due to it under said contracts by reason of the mat-

ters above alleged, all occurring prior to March 26, 1920, can be determined only by an accounting involving the consideration of complicated accounts comprising thousands of items and extending over a period of years, including an accounting as to materials supplied in small and large quantities by the defendant at frequent and divers times during said period of years, and as to materials taken or retaken by defendant for which Groton Iron Works is entitled to credits, on all of which there never has been an adequate accounting, and on which it is impossible to arrive at the correct times of debit and credit except by an accounting in equity; but, on information and belief, the amount due and owing to complainant in respect of said matters, over and above all credits, due to defendant, is in excess of the sum of three hundred and ninety-two thousand dollars ($392,000).

II

15. On or about August 11, 1917, defendant entered into a contract in writing and under seal with Groton Iron Works whereby Groton Iron Works agreed to construct for defendant six (6) steel cargo carrying vessels of 8,800 dead-weight tons each in accordance with the terms, conditions and specifications of said contract, and defendant agreed to pay for each of said vessels the sum of one million three hundred and sixty-four thousand dollars ($1,364,000) in the manner provided in said contract. A copy of said contract is attached hereto and made a part of this bill of complaint and marked " Exhibit 3."

16. By the terms and conditions of said contract Exhibit 3, defendant agreed to pay Groton Iron Works for all increases in the cost of materials, equipment, and labor used in the construction of said ships, and defendant limited Groton Iron Works in the purchase of material and equipment to such purchases as were approved by defendant. Defendant also agreed to make Groton Iron Works reasonable payment or allowance for all alterations, additions, omissions, and substitutions in the plans for the construction of said vessels ordered in writing by defendant and any increase in cost caused by any instructions as to wages or conditions of employment given by the defendant in writing and defendant also agreed to pay or make allowance to Broton Iron Works for any excess over 8,800 dead-weight tons in the tonnage of each of said vessels constructed in accordance with the requirements of defendant.

17. Thereafter Groton Iron Works commenced the construction of said steel vessels in accordance with the terms of said contract Exhibit 3, and duly constructed and delivered to the defendant prior

to March 26, 1920, said six (6) steel vessels and duly performed all the terms of said contract on its part to be performed, except as prevented by the acts of the defendant or except as waived by defendant.

18. During the construction of vessels under said contract Exhibit 3, and prior to March 26, 1920, Groton Iron Works was compelled to and did expend large sums of money by reason of the increased cost of material, equipment, and labor and was compelled to and did make alterations, additions, omissions, and substitutions in the plans for the construction of vessels which were ordered or approved by defendant in writing, expended large sums of money by reason of the compliance with the instructions and orders of defendant in writing with regard to wages and conditions of employment and constructed said vessels in accordance with the requirements of defendant, resulting in a considerable excess over 8,800 tons in the dead-weight tonnage of all of said vessels. Notwithstanding its agreements, defendants failed and refused to pay
31 Groton Iron works, or to make due allowance and credit for such extra costs and expenditures and increases in tonnage.

19. Defendant, at various times and in various ways, made partial payments in cash and material under and on account of said contract Exhibit 3.

20. The exact amount of said partial payments and the exact amount of money expended by and due to Groton Iron Works as above alleged, all occurring prior to March 26, 1920, and the balance due it under said contract Exhibit 3 can be determined only by an accounting involving the consideration of complicated accounts comprising thousands of items extending over a period of years, including an accounting as to materials supplied in small and large quantities by the defendant at frequent and divers times during said period of years, and as to materials taken or retaken by defendant for which Groton Iron Works is entitled to credits, on all of which there never has been an adequate accounting, and on which it is impossible to arrive at the correct items of debit and credit except by an accounting in equity; but, on information and belief, the amount due and owing to complainant in respect of said matters, over and above all credits due defendant is in excess of the sum of four million, seven hundred and fifty-two thousand dollars ($4,752,000).

III

21. While Groton Iron Works was engaged in the performance of contracts Exhibits 1, 2, and 3, and on or about the 20th day of April, 1918, at the request and solicitation of defendant and upon its representation and promise immediately to make payment of

the amounts which had become due to Groton Iron Works
32 under said previous contracts over and above the amount of
the progress payments, by reason of increased costs and additional services and expenditures beyond the terms of the contracts, Groton Iron Works entered into another contract in writing under seal with defendant whereby it agreed to construct six (6) steel cargo carrying vessels of 9,400 tons dead-weight capacity each in accordance with the terms, conditions, and specifications of said contract, and defendant agreed to pay for each of said vessels the sum of one million seven hundred and ten thousand eight hundred dollars ($1,710,800) in the manner provided in said contract. A copy of said contract is attached hereto and made a part of this bill of complaint and marked "Exhibit 4."

22. By the terms and conditions of said contract Exhibit 4 de fendant agreed to pay Groton Iron Works for all increases in the cost of labor and of material and equipment and freight thereon required in the construction of said ships. Defendant limited Groton Iron Works in the purchase of material and equipment to such purchases as were made through or approved by defendant. Defendant also agreed to make Groton Iron Works reasonable payment or allowance for all alterations, additions, omissions, and substitutions in the plans for the construction of said vessels ordered in writing by defendant and to make payment or allowance for any excess over 9,400 dead-weight tons in the tonnage of each of said vessels constructed in accordance with the requirements of the defendant. It was provided that upon delivery of each vessel there might be determined the approximate amount of the contractor's profit and 50 per cent of said estimated profit paid to Groton
33 Iron Works, and that upon a final adjustment of the contract which should include allowances or reductions for bonus, liquidated damages, and the cost of changes and extras, if any, the balance due, including retained percentages of profits on vessels previously delivered, should be paid in cash to Groton Iron Works.

23. Thereafter Groton Iron Works commenced the construction of said vessels in accordance with the terms of said contract Exhibit 4, and duly constructed and delivered to the defendant the vessels provided for in said contract, excepting three (3) vessels the construction of which was ordered cancelled by defendant, hereinafter alleged, and Groton Iron Works duly performed the obligations of said contract on its part to be performed, except as prevented by the acts, defaults and refusals of defendant, and except as waived by defendant.

24. During the course of construction and after Groton Iron Works had entered upon the work of construction of all six (6) of said

vessels under contract Exhibit 4 and had purchased and had become obligated for large quantities of material and equipment for said vessels, and had entered into subcontracts for work and services, and after Groton Iron Works had performed certain work and services in connection with the construction of all of said vessels, and on or about and during the month of February, 1919, defendant, wrongfully and in violation of the terms of said contract, directed Groton Iron Works to suspend all work on the last three (3) steel vessels to be constructed under said contract, and stated that it would refuse to accept or pay for said vessels or the work of construction thereof.

34 25. During the construction of the vessels under said contract Exhibit 4 Groton Iron Works was compelled to and did expend large sums of money by reason of the increased cost of labor and of material, equipment, and freight thereon, and was compelled to and did make alterations, omissions, additions, and substitutions in the plans for construction of vessels, which were ordered or approved by defendant in writing, and expended large sums of money by reason of compliance with instructions and orders of defendant as to the manner in which said work of construction should be carried out, and constructed said vessels in accordance with the requirements of defendant, which resulted in a considerable excess in the dead-weight tonnage of each of said vessels over 9,400 tons. Notwithstanding its agreements, defendant failed and refused to pay Groton Iron Works or to make due allowance or credit for such extra costs and expenditures and increase in tonnage.

26. Defendant, at various times and in various ways made partial payments in cash and materials under and on account of said contract Exhibit 4.

27. The exact amount of said partial payments and the exact amount of money expended by and due to Groton Iron Works, as above alleged, and the balance due to it under said contract Exhibit 4 by reason of the matters above alleged, prior to March 26, 1920, can be determined only by an accounting (except the loss caused by wrongful cancellation of the construction of the last three (3) vessels under said contract alleged in V hereof), which accounting will involve the consideration of complicated accounts comprising thousands of items extending over a period of years, including

35 an accounting as to materials supplied in small and large quantities by the defendant at frequent and divers times during said period of years, and as to materials taken or retaken by defendant for which Groton Iron Works is entitled to credits, on all of which there never has been an adequate accounting, and on which it is impossible to arrive at the correct items of debit

and credit except by an accounting in equity; but, on information and belief, the amount due and owing to complainant in respect of said matters prior to March 26, 1920, over and above all credits due defendant, is in excess of the sum of seven hundred thousand dollars ($700,000), exclusive of loss or damage by reason of the wrongful cancellation above referred to.

28. The exact amount of said partial payments and the exact amount of money expended by and due to Groton Iron Works as above alleged and the balance due to it under said contract by reason of the matters above alleged subsequent to March 26, 1920, can be determined only by an accounting involving the consideration of complicated accounts comprising thousands of items and extending over a period of years, including an accounting as to materials supplied in small and large quantities by the defendant at frequent and divers times during said period of years, and as to materials taken or retaken by defendant for which Groton Iron Works is entitled to credits, on all of which there never has been an adequate accounting, and on which it is impossible to arrive at the correct items of debit and credit except by an accounting in equity; but, on information and belief, the amount due and owing to complainant in respect of said matters subsequent to March 26, 1920, over and above all credits due defendant, is in excess of the sum of four hundred thousand dollars ($400,000).

36 IV

29. During the progress of the work under the construction contracts herein referred to, Exhibits 1, 2, 3, and 4, and prior to March 26, 1920, defendant took into its own possession large quantities of lumber, materials, and stores consigned and in transit to Groton Iron Works or in its yards and the property of Groton Iron Works, and received the benefit thereof, and, at the request of defendant, Groton Iron Works delivered to defendant certain other quantities of lumber, material, and stores which were the property of Groton Iron Works, and defendant promised and agreed to pay Groton Iron Works the reasonable value of all such lumber, materials, and stores so taken by or delivered to it; and Groton Iron Works, at the direction and request of the defendant, expended large sums of money for work and services not contemplated or required to be furnished by Groton Iron Works under the terms of said contracts, and expended large sums of money in enlarging its equipment and shipyard, and the defendant received the benefit of all such services and expenditures and promised and agreed to reimburse Groton Iron Works therefor; and defendant has failed

and refused to pay or give credit to Groton Iron Works for the reasonable value of such materials, stores, expenditures and services.

30. During the progress of the work under the construction contracts herein referred to, Exhibits 1, 2, 3, and 4, and subsequent to March 26, 1920, defendant took into its own possession large quantities of lumber, materials and stores consigned and in transit to Groton Iron Works or in its yard and the property of Groton Iron Works, and received the benefit thereof, and, at the request of
37 defendant, Groton Iron Works delivered to defendant certain other quantities of lumber, material, and stores which were the property of Groton Iron Works, and defendant promised and agreed to pay Groton Iron Works the reasonable value of all such lumber, material, and stores so taken by or delivered to it; and Groton Iron Works, at the direction and request of defendant, expended large sums of money for work and services not contemplated or required to be furnished by Groton Iron Works under the terms of said contract, and the defendant received the benefit of all such services and expenditures and promised and agreed to reimburse Groton Iron Works therefor; and defendant has failed and refused to pay or give credit to Groton Iron Works for the reasonable value of such material, stores, expenditures, and services.

31. The exact amounts due Groton Iron Works from the defendant for such stores, material, expenditures, and services can be ascertained only upon a thorough accounting, which will involve the examination of books and records and many hundreds of items extending over a period of several years and which are of a very complicated nature, including an accounting as to materials supplied in small and large quantities by the defendant at frequent and divers times during said period of years, and as to materials taken or retaken by defendant for which Groton Iron Works is entitled to credits, on all of which there never has been an adequate accounting, and on which it is impossible to arrive at the correct items of debit and credit except by an accounting in equity; but on information and belief, the amounts due, after allowing for certain partial payments made by defendant in respect of these transactions herein alleged, exceeds the sum of one million,
38 three hundred and eighty-five thousand dollars ($1,385,000) in respect of transactions which occurred prior to March 26, 1920, and the sum of nine hundred and four thousand dollars ($904,000) in respect of transactions which occurred subsequent to March 26, 1920.

32. That under the said contracts for the construction of vessels, Exhibits 1, 2, 3, and 4, and by reason of the other matters hereinbefore alleged in paragraphs 6 to 31, both inclusive, of this bill of

complaint, complainant is entitled to and there is now due and owing to him large sums of money from the defendant, the exact amount of which complainant is unable to state, and which can be determined only upon an accounting between the parties, that complainant and Groton Iron Works have repeatedly demanded such an accounting, but the same has been refused.

33. That, by reason of the impossibility of arriving at a complete and correct statement of the accounts between Groton Iron Works and the defendant, except by an accounting in equity, and by reason of the fact that the work under all of said contracts was being performed concurrently, and the acts and defaults of the defendant in breach of its agreements and its obligations thereunder have operated to cause loss and damage to Groton Iron Works under all of said contracts in such a manner that said loss and damage can not be completely segregated in their application to said contracts, separately, the Groton Iron Works, through its trustee in bankruptcy, has no plain, complete, and adequate remedy at law, and can only have adequate relief through a court of equity.

39 V

34. At the time of making said contract, Exhibit 3, the defendant well knew that it would be necessary for Groton Iron Works to construct a new shipbuilding plant with complete shops and equipment in order to carry out the terms of said contract. After making said contract the defendant assumed and was continuously in control of the shipbuilding industry of the United States and constructed, or caused to be constructed, numerous and large shipbuilding plants and assumed and had control of all shipbuilding materials, plants, and equipment; and the defendant, with full knowledge, as aforesaid, that it was necessary for Groton Iron Works to construct a new shipbuilding plant, shops, and equipment in order to carry out its said contract with defendant, so exercised its said control as greatly to increase wages of all labor used in the construction of shipbuilding plants throughout the country, including the plant being constructed by Groton Iron Works, and the cost of all equipment necessary for both plant and ship construction, and did thereby prevent Groton Iron Works from constructing its said shipbuilding plant within the time or for the price contemplated at the time the said contract, Exhibit 3, was executed; but, on the contrary, defendant hindered and delayed Groton Iron Works in its construction of said plant and the construction of ships under said contract, and compelled it to pay greatly increased wages and costs, not only in the construction of the said plant, but

also in the construction of ships under said contract, all of which acts of the defendant were in violation of the duty of the defendant not to interfere with or make more burdensome or impossible
40 the performance by Groton Iron Works of its said contract, Exhibit 3, and by reason thereof there is now due and owing to the complainant from the defendant the sum of $750,000.

35. During the progress of the work of construction and performance by Groton Iron Works of contracts, Exhibits 1 and 2, and between the dates of September 30, 1918, and March 26, 1920, defendant, wrongfully and in violation of the terms of said contract, directed Groton Iron Works to suspend all work of construction on the last three (3) hulls to be built under said contracts (which were then partially completed), and stated that the defendant would refuse to pay for the said last three (3) hulls; and thereafter said construction on said hulls was suspended, and said hulls remained on the ways in the shipyard of Groton Iron Works for a number of months, during which time Groton Iron Works was not permitted to remove or demolish said hulls and was deprived of the use of said ways; and by reason thereof there is now due and owing to complainant from defendant the sum of one million, five hundred and sixty-five thousand dollars ($1,565,000). Between said dates defendant unreasonably delayed the delivery of material and stores which it was required to furnish by the terms of said contract, and thereby and in other ways breached said contract and caused unreasonable expense and loss to Groton Iron Works. By reason thereof there is due and owing to complainant from defendant the sum of approximately one hundred and thirty-five thousand dollars ($135,000).

36. During the progress of the work of construction under contract, Exhibit 4, and prior to March 26, 1920, defendant,
41 wrongfully and in violation of said contract, directed Groton Iron Works to suspend all work on the last three (3) steel vessels to be constructed under said contract, and stated that it would refuse to accept or pay for the construction of the said vessels, by reason of which there is now due and owing to complainant from defendant the sum of one million seven hundred and fifty thousand dollars ($1,750,000).

Defendant also unreasonably delayed the delivery of material and equipment which it was required to furnish under the terms of said contract, and thereby and in other ways breached said contract, causing Groton Iron Works great expense and loss; and by reason thereof there is now due and owing from defendant to complainant the sum of two hundred thousand dollars ($200,000).

37. During the progress of the work of construction and performance by Groton Iron Works of the contract Exhibit 4, and subsequent to March 26, 1920, defendant wrongfully and in violation of said contract, directed the construction of said ships in a manner not in accordance with the terms of said contract, and unreasonably delayed the delivery of material, equipment, and stores which defendant was required to furnish by the terms of said contract, and thereby and in other ways breached said contract. By reason of the facts and circumstances above alleged there is due and owing complainant from defendant the sum of four hundred thousand dollars ($400,000).

38. During the progress of the work of construction and performance by Groton Iron Works of the contracts Exhibits 1, 2, 3, and 4, and prior to March 26, 1920, defendant interfered
42 with and delayed the work of construction under said contracts by arbitrarily placing an unreasonable number of inspectors in the yards of Groton Iron Works, and through those inspectors interfered with and delayed said work, and thereby and in other ways greatly increased the cost of construction of the ships and shipbuilding plants. By reason of the facts and circumstances above alleged there is due and owing to complainant from defendant the sum of two hundred and fifty thousand dollars ($250,000).

39. By reason of the failure of defendant to pay the sums of money which were due and owing to Groton Iron Works, as hereinbefore alleged, under said construction contracts, Groton Iron Works became indebted in large sums to persons, firms, and corporations for material, supplies, work, and services ordered and required and used for the benefit of defendant in connection with the performance by Groton Iron Works of contracts Exhibits 1, 2, 3, and 4, and by reason thereof, on or about March 20, 1919, temporary receivers of Groton Iron Works were duly appointed by the Superior Court of Connecticut, New London County, and assumed possession of the plant and property of Groton Iron Works, and thereafter, and on or about April 7, 1919, permanent receivers were duly appointed and continued in control of said property.

At request of defendant, the then district manager of defendant, one Frederick Conlin, was appointed one of the permanent Receivers of Groton Iron Works, and thereafter during the continuance of said receivership said district manager was located at the plant of Groton Iron Works and was active in the superintendence of
43 the construction work being performed under said contracts.

At the time of the appointment of said receivers Groton Iron Works was a solvent corporation and was entitled to receive of and from the defendant a sum in excess of all liabilities.

Thereafter and by reason of said receivership and until the termination of said receivership on or about April 3rd, 1920, the Groton

Iron Works was deprived of the use of its plant and equipment and of the right to continue the construction of vessels in accordance with the terms of said contracts and to obtain other contracts for construction of other work, and the credit, business, and reputation of Groton Iron Works was greatly impaired.

Said plant, because of lack of sufficient funds in the hands of the receivers for purposes of repairs, was allowed to deteriorate and depreciate in value, and proper repairs were not made thereon, and large sums of money advanced by defendant and charged to Groton Iron Works were expended by order of court for receivers' fees, counsel fees, and other expenses of the receivership, and for other purposes not required by the terms of said contracts nor for the construction of vessels thereunder; and because of the reasons hereinbefore set forth and by reason of the policy of the receivers having in view a limited period of operation and a sale of the plant, the cost of the vessels constructed was unreasonably increased beyond what it would have been had not such receivership intervened.

By reason of the foregoing there is now due and owing to the complainant the sum of seven hundred and fifty thousand dollars ($750,000).

40. The receivership above referred to was terminated on or about April 3, 1920, and thereafter the plant and property of
44 Groton Iron Works was returned to its possession, and it continued to carry out said contracts, except as prevented by the acts and defaults of defendant. Thereafter, during the course of completion of said construction contracts, defendant unwarrantably interfered with the work of construction by placing an unreasonable number of inspectors in the plant and by arbitrarily requiring the work of construction to be carried on not in accordance with the terms of the construction contracts, but according to the whims and requirements of the defendant and its inspectors and by making application, on or about April 26, 1920, to the Superior Court of Connecticut, for reinstatement of the receivers of Groton Iron Works, and thereby and in other ways increased the cost and expense of said construction. By reason of the foregoing facts and circumstances there is due and owing to complainant from defendant the sum of one hundred and fifty thousand dollars ($150,000).

41. During the progress of the work of construction under the said contracts Exhibits 1, 2, 3, and 4, under the order and direction of defendant, and under threat of unjustifiable cancellation of said contracts by defendant, and later in accordance with the requirements of contract Exhibit 4, Groton Iron Works was required to and did, at great expense, buy certain real estate in Groton, Connecticut, of large value, and constructed thereon dwelling houses for its

employees, also at great expense, and thereafter, and on or about the 15th day of July, 1919, defendant, without justifiable cause compelled Groton Iron Works to transfer to defendant its interest in said real estate and dwelling houses, and defendant failed and re-
45 fused to pay Groton Iron Works the reasonable value thereof or to make reasonable allowance for the property so transferred. The reasonable value of said property so transfered was upwards of three hundred and fifty thousand dollars ($350,000). By reason of the foregoing facts and circumstances there is now due and owing to complainant from defendant the sum of three hundred and fifty thousand dollars ($350,000).

42. By reason of the continued defaults and breaches of said contracts herein referred to and the failure of defendant to make payment of the sums of money due to Groton Iron Works under said contracts, and by reason of the unjustifiable refusal of defendant to permit Groton Iron Works to construct and deliver the last three (3) wooden hulls under said contracts Exhibits 1 and 2 and the last three (3) steel hulls under contract Exhibit 4, and the fact that Groton Iron Works was thereby deprived of a large amount of profit which it could have made had it been permitted to complete and deliver said hulls and vessels, and by reason of the orders and directions of defendant as hereinbefore alleged, Groton Iron Works became indebted in large amounts to persons, firms, and corporations for material, services, and supplies furnished for the construction of the plant and vessels under said contracts and which were used for the benefit of defendant, and, in order to preserve its plant and property and to protect such creditors and to collect the sums of money due and owing from defendant, Groton Iron Works was compelled to and did, on or about the first day of December, 1921, file a petition in bankruptcy in the District Court of the United States for the District of Connecticut; and, by reason of the foregoing, the business, credit, and reputation of Groton Iron Works were
46 greatly impaired and its plant and property greatly depreciated and damaged, and said shipbuilding plant and organization were rendered useless as a going concern, and the personnel and organization thereof were demoralized and lost, and Groton Iron Works was deprived of the opportunity to continue its business as a going concern and obtain contracts and make profits therefrom. By reason of the foregoing facts and circumstances there is due and owing to complainant from defendant the sum of five hundred thousand dollars ($500,000).

43. Payment of the sum hereinbefore in paragraphs 33 to 40, inclusive, alleged to be due and owing, has been duly demanded of

defendant by Groton Iron Works and this complainant, but the same has been refused.

VI

44. At all times during the continuance of the receivership as hereinabove alleged and between the dates of about March 20, 1919, and April 3, 1920, and by reason of said receivership and the facts and circumstances hereinabove alleged, Groton Iron Works, its officers and representatives, were deprived of possession of the plant and property and of control and management of the affairs of its shipbuilding plant and the construction work which was being performed, and were deprived of access to the books and records of said plant, and by reason thereof said officers and representatives were prevented from obtaining and had not any information concerning the progress of the work of construction of ships or the cost thereof, or the amounts of money which had been advanced by defendant or expended by the receivers or the status of the accounts between
47 defendant and said receivers or the sums of money which were due and owing to said receivers and Groton Iron Works from defendant or the condition of the plant and property, all of which knowledge and information were available and known to defendant At all times prior to the termination of said receivership, defendant well knew that Groton Iron Works, its officers, and representatives, were without such information and without the means of obtaining the same.

45. At various times between November, 1919, and March, 1920, said receivers, at the instance of defendant as well as in their own behalf, entered into negotiations with various parties for and attempted to effect a sale of the shipbuilding plants of Groton Iron Works. By reason of the fact that such a sale, if consummated, would deprive Groton Iron Works of its right to its plant and property and to a continuance of the business thereof, and by reason of the desire of Groton Iron Works to repossess itself of its plant and property for the protection of the interests of its creditors and stockholders, Groton Iron Works, throughout said period of time, endeavored to secure the lifting of said receivership and the prevention of the great loss and damage to its creditors and stockholders resulting from the facts and circumstances hereinabove alleged and which would result from a forced sale in the receivership proceedings of said plant, assets, and business; and Groton Iron Works communicated to defendant its desire to repossess itself of its plant and property as aforesaid, and Groton Iron Works thereupon engaged in negotiations with defendant to accomplish such purpose.

46. Defendant, with full knowledge of the facts and circumstances hereinabove alleged, stated and represented to Groton
48 Iron Works in the course of said negotiations, and as an inducement to Groton Iron Works to conclude arrangements for the liftng of said receivership and the repossession of its plant and property, that on the transactions which had taken place between the defendant and Groton Iron Works under contracts Exhibits 1, 2, 3, and 4 prior to the receivership and between the defendant and the receivers under said contracts since the appointment of the receivers there was only a very small, if any, amount owed by the defendant, that the accounts of the defendant showed that the increased price then offered Groton Iron Works of $199.16 a ton for the steel vessels which had been constructed under contract Exhibit 3 and $200 a ton for the construction, complete, under contract Exhibit 4 of the three steel vessels 7 to 9, inclusive, then partially completed, would provide Groton Iron Works, on the terms of adjustment then proposed, with a considerable amount of money which would be more than enough to pay the cost of the completion of said three (3) steel vessels 7 to 9, inclusive, and leave Groton Iron Works a substantial profit; that if Groton Iron Works would agree to release all claims to date which it had under said contracts Exhibits 3 and 4 against the defendant and undertake the completion of the three (3) steel vessels 7 to 9, then at the plant at Groton, Connecticut, partially constructed, the defendant would, as the consideration for such relate and undertaking, put Groton Iron Works in position to operate its plant and proceed with said construction work, with the possibility of successful and profitable operation, by—

(1) Joining in efforts to have the receivership lifted;

49 (2) Increasing the amount to be paid by defendant for the steel vessels constructed under contract Exhibit 3 from about $160 per ton to $199.16 per ton, and the price to be paid for the completion of the three steel vessels 7 to 9 under contract Exhibit 4 from about $185 per ton to $200 per ton;

(3) Delivering to Groton Iron Works—

(a) 1 completed Ferris-type wooden ship;

(b) 1 Ferris-type hull; and

(c) 1 bill of materials;

which were of the total approximate value of five hundred and eighty thousand dollars ($580,000);

(4) Adjusting the claim arising from the cancellation of construction of three (3) steel ships under contract Exhibit 4 by paying Groton Iron Works therefor in cash or credit the sum of five hundred thousand dollars ($500,000);

(5) Proceeding at once with the reconciliation of the mutual accounts between Groton Iron Works and the defendant arising from the construction of wooden hulls under contracts Exhibit 1 and 2 and paying to Groton Iron Works any amount due thereunder;

(6) Forthwith advancing the sum of two hundred and fifty thousand dollars ($250,000) to be used as a partial payment on creditors' claims then outstanding against Groton Iron Works; and

(7) Performing all the other terms then proposed by defendant and thereupon embodied in a written instrument described in the next succeeding paragraph of this bill of complaint.

50 47. In connection with and in furtherance of the negotiations above mentioned, in the course of which the statements and representations set forth in the last preceding paragraph were made by defendant to Groton Iron Works, defendant had drafted and tendered to Groton Iron Works under date of March 26, 1920, a written instrument, a copy of which is hereto annexed, made a part of this bill, and marked "Exhibit 5." By the terms of said instrument it was provided, among other things, that Groton Iron Works, in accord and settlement, should cancel all obligations of defendant in connection with the completion of three (3) steel vessels Nos. 10 to 12 under contract Exhibit 4 (on which construction had been suspended by the defendant), and in connection with the completion of three wooden hulls partially completed under contracts Exhibits 1 and 2, and should release its claims to date against the defendant arising out of contracts Exhibits 3 and 4, but should proceed, on the terms specified in Exhibit 5, with the completion of hulls 7 to 9, inclusive, included in contract Exhibit 4, the defendant, as its part of said accord and settlement, to—

(1) Advance to Groton Iron Works further sums of money until the total of said advances amounted to the sum of sixteen million six hundred and fifty-five thousand six hundred and forty-eight dollars ($16,655,648);

(2) Do the other things stated in paragraph 46, supra, and expressly enumerated in Exhibit 5 as things to be done on the part of the defendant in exchange for the release from Groton Iron

51 Works and in just compensation and in accord and satisfaction for the cancellations and releases therein provided for.

48. Groton Iron Works, in reliance upon the statements and representations made to it by defendant, and upon the accuracy thereof, and without knowing or having means of knowing the true state of affairs, and to avoid the impending complete loss of the entire plant and business through the receivership proceedings and the threatened forced sale of said plant and business, and for the purpose of protecting its stockholders and creditors so far as possible from further great loss and damage which would have resulted to them from such

a forced sale, and in further reliance upon the performance by defendant of the considerations set forth in said instrument dated March 26, 1920, to be performed by defendant, and under compulsion of accepting the terms and conditions offered by defendant as the only means of enabling Groton Iron Works to lift said receivership and obtain possession of its plant and property, signed said instrument on or about March 26, 1920. Defendant also signed said instrument on or about March 30, 1920.

49. The statements and representations made by defendant to Groton Iron Works as to the state of the accounts between defendant and Groton Iron Works and the receivers with relation to past transactions under contracts Exhibits 1, 2, 3, and 4 were, as was fully known by the defendant, material and essential factors in the determination by Groton Iron Works of its acceptance or rejection of the instrument Exhibit 5, and defendant also fully knew that the credi

of Groton Iron Works had been destroyed by the receivership
52 proceedings and that the further operation by Groton Iron Works of the plant, the carrying of the heavy overhead of said plant, and the prosecution of further construction work successfully was wholly dependent on the prompt receipt by it of the money, material, and vessels which the defendant was to furnish thereby affording Groton Iron Works working capital and materials with which to operate, and on a full, prompt, and complete performance by defendant of the terms of said Exhibit 5.

50. Contrary to the statements and representations of the defendant as above alleged, there was, as the complainant is informed and believes, due from defendant to Groton Iron Works and the receivers thereof at the time of said statements and representations and at the time of the signing of said instrument Exhibit 5, by reason of the matters hereinbefore alleged in I, II, III, IV, and V, a sum in excess of six million dollars ($6,000,000) over and above all payments made by and credits due to the defendant; also the actual cost of the construction of the three (3) steel vessels 7 to 9 remaining uncompleted under contract Exhibit 4, at the plant of Groton Iron Works March 26, 1920, greatly exceeded the sum of $200 per ton, and, on information and belief, the books and records of the defendant showed, on and prior to March 26, 1920, that the cost of said construction would greatly exceed $200 per ton, and also that there had been advanced to Groton Iron Works and its receivers prior to March 26, 1920, on account of the ship construction contracts, the amount in excess of sixteen million one hundred and fifty-five thousand six hundred and forty eight dollars ($16,155,648), and that

large sum of money in addition to said sum would be required
53 to enable Groton Iron Works, even without any profit to complete the construction of said three (3) steel vessels the

partially completed—all of which facts, although unknown to Groton Iron Works or its officers at the time, as hereinbefore alleged, were, as complainant is informed and believes, prior to the signing of said instrument dated March 26, 1920, Exhibit 5, known to defendant, or could and should have been known to defendant from information readily available to defendant at the time.

51. The terms proposed by defendant were accepted, and said instrument Exhibit 5 was signed by Groton Iron Works under duress under compulsion of the circumstances as hereinabove alleged and as the only means of enabling it to lift said receivership and to obtain possession of its plant and property to which it was rightfully entitled.

52. The terms proposed by defendant were accepted, and said instrument Exhibit 5 was signed and delivered, in the circumstances hereinabove set forth without adequate and valid consideration or any consideration whatever, payable or paid by defendant to Groton Iron Works.

53. Shortly after the signing of said instrument Exhibit 5, and on or about April 17, 1920, defendant notified Groton Iron Works that it would not advance any further sums of money, and stated that there had already been advanced on that date a total amount in excess of the sum provided to be advanced under the terms of the construction contracts and the instrument Exhibit 5; and thereafter defendant failed and refused to make any further payments or advances in accordance with the terms of said contracts or the

54 terms of said instrument Exhibit 5. On or about the 26th day of April, 1920, defendant made application to the Superior Court of Connecticut for the reinstatement of receivers of Groton Iron Works. Defendant, without justification or right, required the guaranty of Virginia Shipbuilding Corporation for subsequent advances to Groton Iron Works and ordered and directed and insisted upon the construction of said last three (3) steel vessels, not in accordance with the terms of contract Exhibit 4 and instrument Exhibit 5, but according to the arbitrary whims and requirements of defendant and its inspectors. Defendant, as herein specified and in other ways, wholly refused and still refuses to perform or to be governed by, the terms of said instrument Exhibit 5, and wholly disregarded, repudiated, and abandoned the same.

Subsequent to March 26, 1920, defendant also failed and refused to deliver to Groton Iron Works a Ferris-type wooden ship and Ferris-type hull or a bill of material, or to make allowance to Groton Iron Works in the sum of five hundred thousand dollars ($500,000) in adjustment of the claim arising from the cancellation of three (3) vessels under contract Exhibit 4, or to proceed with the reconciliation

of the accounts between Groton Iron Works and the defendant arising out of the construction contracts Exhibits 1 and 2, or to make payment to Groton Iron Works of the amount due it thereunder or to perform any other of the terms and provisions of said instrument Exhibit 5—except that thereafter the sum of two hundred fifty thousand dollars ($250,000) (an amount which was only a small part of the money then due and owing to Groton
55 Iron Works), was paid by defendant, but not in accordance with the terms of said instrument Exhibit 5.

54. By reason of the misrepresentations or mistake on defendant's part and the lack of knowledge and mistake of Groton Iron Works as to the essential facts on which the instrument of March 26, 1920, was signed by Groton Iron Works, the duress inducing such signing, the lack of consideration therefor, the failure of the defendant to perform the considerations which were of the essence thereof, the abandonment by the defendant of performance by it thereunder, and the repudiation by the defendant of the said instrument of March 26, 1920, Exhibit 5, and of all the other facts and circumstances hereinabove alleged, said instrument has become and should in equity be held to be wholly void and inoperative and of no force and effect; but, if said instrument is not so found to be wholly void, inoperative, and of no force and effect, the complainant says that nevertheless the provisions of said instrument Exhibit 5 for the accord, settlement, cancellation, and release of liabilities of the defendant for defaults prior to March 26, 1920, were conditional upon and in consideration of the doing and performance by the defendant of the things stipulated in said Exhibit 5 to be done and performed by the defendant as the consideration for and in execution of such provisions of said instrument, and the defendant failed and refused to perform said provisions, and so acted as to render said provisions worthless and of no value to Groton Iron Works and the complainant and legally inoperative; by reason whereof, in the event that said instrument Exhibit 5 has not become wholly void, inoperative, and of no force and effect because of the facts and circumstances
56 herein alleged, the provisions as to the accord and as to said cancellation and release by Groton Iron Works of said liabilities of the defendant in accordance with said provisions have not come into operation and are of no force and effect.

55. In the event that said instrument Exhibit 5 has not become wholly void, inoperative, and of no force and effect, or abandoned, Groton Iron Works and this complainant are entitled to recover from defendant for all losses and damage incurred and suffered by Groton Iron Works by reason of the defendant's failure to perform and carry out its obligations under said instrument. The amount

which in that case is due and owing from the defendant to Groton Iron Works and the complainant by reason of the failures and defaults of the defendant under said Exhibit 5 is dependent upon whether the accord and release provisions of said Exhibit 5 as to prior liabilities of the defendant are inoperative because of the facts and circumstances hereinabove alleged, and, if said accord and release provisions are inoperative, upon whether recovery is to be had for breaches prior to March 26, 1920, under said contracts Exhibits 1, 2, 3, and 4 directly or under Exhibit 5 as incorporating by its article XVII said contracts Exhibits 1, 2, 3, and 4 as a part of Exhibit 5. The amount which the complainant is entitled to recover under said instrument Exhibit 5, if the same is held not to have become wholly void, inoperative, rescinded, and of no force and effect, can be settled only by determination by a court of equity of the effect, with respect to the operation of said instrument, of the breaches, defaults, and acts of the defendant as herein set forth and by an accounting in equity involving the consideration of
57 complicated accounts comprising many hundreds of items and extending over a period of about eleven months, including an accounting as to materials supplied in small and large quantities by defendant at frequent and divers times during said period of months, in regard to all of which there has never been an adequate accounting and in regard to which it is impossible to arrive at the correct items of debit and credit except by an accounting in equity. But, upon information and belief, the amount which would be due and owing to the complainant for damages, for breaches and defaults of the defendant under Exhibit 5 is in excess of the sum of one million seven hundred and ninety-two thousand one hundred dollars ($1,792,100), and in addition thereto the complainant claims the right to recover all sums alleged in IV and V of this bill of complaint to be due by reason of matters occurring subsequent to March 26, 1920.

Wherefore complainant prays for relief as follows:

1. That a full and complete accounting between Groton Iron Works and defendant upon the facts and transactions referred to in this bill of complaint be taken and stated in accordance with the usual practice of this court;

2. That a decree be made and entered herein adjudging said instrument, Exhibit 5, to be null, void, inoperative, and of no force and effect, to have been repudiated and abandoned by the defendant and setting aside the same, or, if said instrument, Exhibit 5, is not so adjudged to be wholly void and inoperative, adjudging that the provisions thereof providing for an accord and the release and cancellation of liabilities of the defendant for prior breaches and de-

faults are null, void, inoperative, and of no force and effect,
58 or have not come into operation and effect;

3. That a decree be entered in favor of the complainant against defendant for the amounts found to be due to Groton Iron Works and complainant on such statement of accounts by reason of the transactions alleged in this bill of complaint, and that complainant have a money judgment against defendant for the amounts found upon such accounting to be due by defendant;

4. That the complainants have such other and further judgment, decree, order, and relief as to equity may appertain and as by this honorable court may be deemed to be fit and proper.

WALLER, WALLER, AVERY & GALLUP,
HERBERT B. LEE,
Solicitors for Complainant.

WILLIAM H. GRIFFIN,
H. STARR GIDDINGS,
ROBERT P. STOUT,
Of Counsel.

(Verified by complainant July 11, 1923.)

Exhibit 1, attached to complainant

(Defendant's Exhibit E)

Contract No. 15 W. H.

Contract made this 15th day of June, 1917, between Groton Iron Works, a corporation organized under the laws of the State of Maine, party of the first part (herein called the contractor), and United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, party of the second part (herein called the owner).

For valuable considerations, the receipt of which is hereby
59 acknowledged by both parties, and in consideration of the mutual promises of the parties, it is agreed as follows:

I

The contractor hereby agrees to construct, at its own risk and expense, in accordance with the Ferris standard drawings and specifications, with amendments to June 1st, 1917, of the owner, which are by reference made a part of this contract, under the rules and regulations of the American Bureau of Shipping (but not under the rules and regulations of the United States Steamboat Inspection Service), twelve (12) wooden cargo-carrying hulls suitable for cargo-

carrying steamers, but without propelling machinery and equipment and auxiliaries.

The contractor agrees to deliver said hulls to the owner afloat at the works of the contractor at Noank, Connecticut, as follows:

The first hull to be delivered on or before five (5) months after the receipt by the contractor at the aforesaid works of lumber for the keel of such hull, according to the drawings and specifications, and the remaining number of hulls to be delivered, one hull every two (2) weeks thereafter (the deliveries may be on an average, providing the contractor shall anticipate deliveries), so that the last hull will be delivered within fifteen (15) months from the date of this contract.

II

1. In consideration of the performance of this agreement by the contractor, the owner agrees to pay therefor the lump sum of three hundred thousand dollars ($300,000.00) for each of such hulls, as follows:

(a) Ten per cent (10%) of the contract price of twelve (12) hulls five (5) days after signing this contract, upon presentation of a detailed statement sworn to by an officer of the contractor that the contractor has materials on hand, or commitments, for the construction of said hulls, equal to, or in excess of, such payment;

(b) Ten per cent (10%) of the contract price of each hull when the keel thereof is laid and one-fourth (¼) of the framing timber for said hull is in the contractor's yard;

(c) Ten per cent (10%) of the contract price of each hull when all of the square frames to said hull are in place;

(d) Ten per cent (10%) of the contract price of each hull when the center and sister keelsons to said hull are in place, cant frames erected, and stem and stern post up;

(e) Ten per cent (10%) of the contract price of each hull when said hull is ceiled to the tween deck and the lower deck clamps are in;

(f) Ten per cent (10%) of the contract price of each hull when ceiled to the upper deck, all clamps and shelf stakes or hanging knees are in place and both lower and upper deck beams are in;

(g) Ten per cent (10%) of the contract price of each hull when said hull is planked to the main decks and the waterways in place;

(h) Ten per cent (10%) of the contract price of each hull when fully planked, decks laid, and the decks and the outside of hull entirely caulked;

(i) Ten per cent (10%) of the contract price of each hull when the hull is successfully launched;

(j) Ten per cent (10%) of the contract price of each hull when the hull has been completed, and on delivery to and acceptance by the owner of such completed hull.

Provided that as to all the above installment payments after
61 the first payment described in subdivision (a) above, no payment shall be deemed to be due at times fixed unless the amount of such installment, in addition to any theretofore paid and the proportion of the first payment, is fairly represented in the progress of the work of construction on such hull together with the value of materials assembled at the contractor's yard, and such fact is certified to by the owner's inspector.

2. In the event there shall be any advance in the actual cost of lumber, finished on four sides, used in the construction of said hulls, over the sum of forty-eight dollars ($48.00) per thousand f. o. b. contractor's works, or in the event there shall be any advance in the average cost of labor, either by increase in rates or decrease in hours, employed in the construction of said hulls over the schedule of wages now paid by the contractor, as more specifically stated in Schedule A annexed to this contract and made a part hereof, then, in either or both of said events, the lump-sum purchase price stated in section 1 of this article shall be increased by the amount of such advance.

3. The owner agrees, upon the written request of the contractor, to submit prices and/or purchase at such prices as soon as may be practicable after the receipt of such request any and all materials for use in the construction of said hulls, not herein otherwise specifically provided for, and to sell the same to the contractor at the prices paid therefor by the owner f. o. b. factory. The contractor shall immediately reimburse the owner for materials so sold to the contractor, and in the event any amount shall be owing to the owner under this section at the time any of the payments provided for in section 1 of this article shall become due and
62 payable the owner may retain from such payments an amount sufficient to offset such amount owing to the owner under this paragraph.

4. No inspector's certificate given or payment made under the terms of this contract (except on final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the contractor to the inspectors appointed by the owner. It shall be the duty of such inspectors, either personally or by

eputies, to inspect all materials and workmanship entering into the onstruction, and to accept such materials and/or all workmanship s are in conformity with specifications, and promptly to reject ll materials and/or all workmanship which do not comply with he specifications, such condemnation, if any, of materials to be made y such inspectors before the same are worked or put in construcion, if opportunity so to do is afforded by the contractor. Said nspectors shall also have the right of rejection after material is orked or put into construction if facilities are not given for inpection prior thereto.

5. The contractor may at any time, if dissatisfied with the owner's epresentative at the contractor's works, present a complaint in riting to the general manager of the owner, and in the event the eneral manager shall, in his opinion, consider the complaint well ounded, the owner shall withdraw said representative and substitute nother representative.

6. The contractor shall not be privileged to buy any part of the mber for any hull if the contractor takes advantage of the special prices arranged for complete units by the owner.

3 The owner shall, so far as possible, cause the lumber furnished to the contractor hereunder to be inspected at the mills, ut in the event the owner shall reject any lumber after the same hall reach the works of the contractor, the contractor shall not uffer any loss thereby, or be responsible for any delay caused by uch rejection. The owner shall not have the right of rejecting any orkmanship or material after the same has once been approved, in riting, by any representative of the owner, and the owner shall, pon request of the contractor, accept or reject, as the case may e, in writing, any or all material and/or workmanship immediately.

III

The owner shall have the right, but only by orders in writing, to ake such reasonable alterations, omissions, additions, or substituons not materially affecting the general design of the hull as the wner may deem necessary. The contractor agrees to concede to and arry the same into effect upon proper compensation or allowance eing agreed therefor as though such alterations, omissions, addions, or substitutions were originally provided for in this contract. f by reason thereof the cost of the construction hereunder shall e increased, then the sum to be paid by the owner to the contractor herein provided shall be increased to an amount which shall be greed upon. If the construction shall be rendered less expensive y reason thereof, the sum to be paid shall be decreased by an

amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions, and substitutions or the price thereof, the dispute shall
64 be determined as provided by Article VII hereof. If the contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect, or default of the owner, or by reason of alterations or additions by the owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the contractor but not delivered, or by reason of strikes, fire, lightning, earthquake, flood, riot, insurrection, or war, or by reason of suspension or delay of deliveries of material, lumber, or machinery for any of the causes above stated, or by reason of instructions given by the owner under Article XI hereof, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VII hereof.

IV

The contractor agrees to insure and keep insured at its own expense for the benefit of the owner, in insurance companies satisfactory to the owner, said hulls and all materials and supplies for and to be used in construction under this contract against any and all damage by fire and marine risks, lightning, settling of staging, breakage of ways, and risks of launching during such construction and until final completion and delivery, such insurance to be in the usual form and to cover the interest of the owner for an amount not less than the amounts of the installments of payment which, from time to time, have been made (provided that the amount of insurance required shall not exceed, at any time, the amount available in the insurance market).

65 V

It is agreed that if the contractor shall materially fail to carry out the provisions of this contract and shall continue in default for a period of 60 days after notice thereof from the owner, or its inspectors, or if the contractor shall fail to make progress on the work satisfactory to the owner, then the owner shall have the power and right to enter into and take possession of said hulls and all materials and appliances in connection therewith, and in a reasonable and economical manner, for account of the contractor, to complete

the work called for in this contract at the yards of the contractor or otherwise. After taking over the work in this manner, the owner shall pay the contractor on account of profit only a reasonable rent for the contractor's yard and facilities used.

Provided, however, that if the contractor can show to the satisfaction of the general manager of the owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which he had no control, the contractor shall be allowed such opportunity as the general manager of the owner may deem reasonable to complete the work within the time prescribed by this contract.

VI

It is agreed that, as the payments provided for herein are made by the owner on account of materials ordered by or assembled or set up in the yard of the contractor or used in the construction hereunder, the same to the extent of the payments made shall become the property of the owner. This change of title, however, shall not be
66 construed as a waiver by the owner of its right to object if the terms of this contract have not been complied with, nor construed as acceptance of any work which fails to fulfill the requirements of this contract.

VII

In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particulars the matter shall be promptly referred to and determined by George W. Goethals, the general manager of the owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case after delivery of a hull to the owner under this contract (but only that event) the contractor shall deem that it is aggrieved by any decision of the general manager as to any disputed matter hereunder of any kind and shall give notice to the owner to that effect within 30 days after delivery or after final payment by the owner, such matter shall be determined by a board which shall consist of three naval architects or engineers or experts, to be appointed one by the owner, one by the contractor, and one by the American Bureau of Shipping. Such board shall within 30 days after sub-

mission of such matter to it determine what, if any, further sum shall be due by the owner to the contractor hereunder on account of such delivered hull, and its finding (made by a majority of the board) shall be conclusive on both parties.

67

VIII

It is agreed by both parties that time is of the essence of this contract. The contractor agrees to commence and carry through to completion the work under this contract with dispatch, and that it will not enter into any other contract or undertake any other work or service at its yard which will interfere in any material manner with the completion of the work undertaken hereunder.

IX

The contractor agrees to deliver the hull to the owner free from any lien or encumbrance. In the event of the filing of any lien or encumbrance against said hulls before final payment on account of any person, firm, or corporation furnishing labor or materials for said construction under this contract the owner may satisfy the same out of any amount not paid to the contractor hereunder, or the owner may, at its option, withhold the amount thereof from any installment payment thereafter coming due hereunder.

X

The contractor agrees to protect the owner from al claims arising from accidents or casualties to employees or workmen on or about the work covered by this contract, and to indemnify the owner against the same.

The contractor shall be responsible for all claims, if any, made against the owner for any infringements of patents or patent rights and for the use of any patented articles, and shall defend and save harmless and indemnify the owner against all such claims, and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringement of patents or patent rights,

68 or of the use of patented articles, provided that the owner will, in all instances, notify the contractor of any claims made against it by reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the contractor of any suit or suits brought against it therefor and give the contractor an opportunity to defend the same, and provided that no payment shall be made by the owner unless with the consent of the contractor or pursuant to a decree by a proper court

in such litigation, and provided that the contractor shall not be liable in the event the owner specifically orders the use of the patent or patented article, whether or not the existence of the patent be known to the parties hereto.

XI

The contractor will comply with all instructions as to wages or conditions of employment of labor on this contract given to it in writing by the owner. If by reason of any such instruction the cost of any hull hereunder shall be increased, then the sums to be paid by the owner to the contractor as herein provided for such hull shall be increased by such amount. Such amount shall be agreed upon by the parties, and if not agreed upon, shall be determined as provided in Article VII hereof.

XII

This contract may not be assigned by the contractor without the consent of the owner in writing: Provided, however, That nothing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the contractor for the purpose of obtaining credit for furthering the construction hereby undertaken, but the owner may by writing make such prohibition.

60

XIII

Payments hereunder shall be made by the owner by check addressed to the contractor by mail at 50 Broad Street, New York City, New York.

In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested on the day above stated.

[SEAL.] UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
By WILLIAM DENMAN, *President.*

Attest:
L. W. H. SAVAGE, *Secretary.*

[SEAL.] GROTON IRON WORKS,
By E. A. MORSE, *President.*
B. W. MORSE, *Secretary.*

Attest:
B. W. MORSE, *Secretary.*

Countersigned:
B. S. HIGLEY, *Director.*

79799—29——4

Exhibit 2, attached to complaint

(Defendant's Exhibit F)

Supplementary contract made this thirtieth day of September, 1918, between Groton Iron Works, a corporation, party of the first part (herein called the contractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, representing the United States of America, party of the second part (herein called the owner).

70 Whereas the contractor, by a contract dated June 15, 1917, agreed to construct for the owner twelve (12) wood hulls, numbers 125 to 136, inclusive, according to the terms and provisions set forth in said contract; and

Whereas the contractor, under said contract of June 15, 1917, and in the performance thereof was required by orders of the owner to make certain alterations, additions, and substitutions, and to work overtime and on Sundays, and to pay wages greatly in excess of wages in Schedule A attached to said contract, for which and additional reasons not herein specifically mentioned the contractor alleges it has suffered losses and has claims against the owner; and

Whereas it is the desire of both parties to change part of said contract of June 15, 1917, for the purpose of settling all of contractor's claims and damages thereunder, and for the purpose of effecting a cancellation by agreement of the construction of four of said hulls.

Now, therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, it is agreed as follows:

I

(1) Said contract of June 15, 1917, is hereby cancelled as to four hulls, numbers 133 to 136, inclusive. The contractor is hereby released from all obligation and liability to build said four hulls or any of them, and the owner is hereby released from all obligation and liability to pay for said four hulls or any of them.

(2) Said contract of June 15, 1917, except as hereinafter modified, is in full force and effect as to hulls numbers 125 to 132, in-

71 clusive. The contractor shall complete the construction of hulls numbers 127 to 132, inclusive, at its own risk and expense, under and in accordance with the rules and regulations of the American Bureau of Shipping and under the terms and

provisions of said contract of June 15, 1917, in accordance with the plans and specifications under which said hulls are now being constructed, but as the same have been or may hereafter be amended by the owner, which plans and specifications are by reference made a part of this contract.

(3) In consideration of the settlement of claims hereinafter more specifically referred to, the owner shall pay, and the contractor shall except, the following sums for the construction of said hulls:

(a) As to hulls numbers 125 and 126, which have been delivered, the owner shall pay the lump sum of four hundred and fifty thousand dollars ($450,000) per hull instead of the lump sum price of three thousand dollars ($300,000) per hull as is provided in said contract of June 30, 1917.

(b) For completing hulls numbers 127 and 128, as aforesaid, the owner shall pay to the contractor the sum of four hundred and fifty thousand dollars ($450,000) per hull instead of the lump sum price of three hundred thousand dollars ($300,000) per hull as is provided in said contract of June 15, 1917.

(c) For completing said hulls numbers 129 to 132, inclusive, the owner shall pay to the contractor the sum of four hundred thousand dollars ($400,000) per hull instead of the lump-sum price of three hundred thousand dollars ($300,000) per hull as provided in said contract of June 15, 1917.

72

II

In consideration of the additional one hundred and fifty thousand dollars ($150,000) per hull herein agreed to be paid the contractor as to hulls numbers 125 to 128, inclusive, and of the additional one hundred thousand dollars ($100,000) per hull herein agreed to be paid to the contractor as to hulls numbers 129 to 132, inclusive, it is agreed as follows:

(1) The contractor hereby waives all damages and all claims of every kind and character due it or alleged to be due it to date hereof under or because of said contract of June 15, 1917, and/or any transaction which occurred in the performance thereof, and hereby expressly releases the owner from the payment of any and all of said claims and damages.

(2) The contractor shall complete the construction of said hulls numbers 127 to 132, inclusive, in accordance with the provisions of Section II, Article I, hereof, and shall make, at its own cost and expense, all alterations, omissions, additions, and substitutions in the construction of said hulls numbers 127 to 132, inclusive, which have been ordered by the owner to date hereof, without additional remuneration.

As to all alterations, omissions, additions, or substitutions which may hereafter be ordered by the owner, the provisions of Article III of said contract of June 15, 1917, shall apply, with the understanding, however, that minor changes which are ordered by the owner shall be made without either addition or reduction
73 from the amount to be paid to the contractor for the construction of said hulls. In case the parties can not agree as to what are minor changes, the same shall be determined by appeal to the general manager of the owner or by arbitration as provided in Article VI of said contract of June 15, 1917.

(3) The wages paid shall be those fixed by the shipbuilding wage adjustment board for the second district, in force on September 30, 1918, the date hereof. In the event said shipbuilding wage adjustment board shall make any general increase in the scale of wages in said district, the net increase in labor cost for the vessels shall be borne by the owner. In the event of any decrease the owner shall receive the sole benefit thereof. If Sunday, holiday, or overtime work be resorted to, it shall be without additional expense to the owner unless specifically authorized in advance by the owner.

(4) In the event there shall be any advance in the average actual cost of lumber, finished on four sides, used in the construction of said hulls, over the sum of forty-eight dollars ($48.00) per thousand f. o. b. contractor's works at Noank, Connecticut, such advance shall be borne by the owner.

The additional one hundred and fifty thousand dollars ($150,000) per hull herein agreed to be paid for hulls numbers 125 to 128, inclusive, and the additional one hundred thousand dollars ($100,000) per hull herein agreed to be paid for hulls numbers 129 to 132, inclusive, shall be paid as follows:

(1) From said additional payments, and before any of them is made, there shall first be deducted the following:

74 (a) The total amount that has been paid to the contractor over and above the amount that is due it under the regular progress payments in said contract of June 15, 1917.

(b) All expenses incurred or which may hereafter be incurred by the owner because of failure by the contractor to have built hulls numbers 125, 126, and 127 according to plans and specifications and all amounts which the owner has paid or will hereafter have to pay to installation contractors or others for the completion, according to said plans and specifications, of said hulls numbers 125, 126, and 127 or any of them. If the parties hereto can not agree as to the amount of the deductions herein provided to be made, the same shall be determined by appeal to the general manager of the

owner or by arbitration, as provided in Article VII of said contract of June 15, 1917.

(c) The payments heretofore made by the owner to the contractor as to hulls numbers 133 to 136, inclusive, under paragraph "a" of Section I of Article II of said contract of June 15, 1917 (which, for information, is the payment of 10% of the contract price provided to be made within five days after signing the contract.

(2) After making the deductions provided for in the immediately preceding Section I, Article II, hereof, the balance of the additional payments herein provided to be made shall be apportioned among the eight hulls numbers 125 to 132, inclusive, on the basis of four hundred and fifty thousand dollars ($450,000) per hull as to hulls numbers 125 to 128, inclusive, and on the basis of four
75 hundred thousand dollars ($400,000) per hull as to hulls numbers 129 to 132, inclusive. The amount of the additional payments thus allotted to each hull shall be divided by ten and shall be due and payable as the progress payments provided for in said contract of June 15, 1917. When computed on this basis, the contractor shall be forthwith paid the amount due it for hulls delivered and for work done.

IV

The contractor shall forthwith cause an inventory to be made of the lumber and material on hand at its yard in excess of that required to complete said hulls numbers 127 to 132, inclusive. The owner shall purchase such of said lumber and material as is approved by the owner's resident inspector and pay to the contractor the invoice price thereof or give the contractor credit for the same in this adjustment, upon receipt by the owner of such material so purchased and of an affidavit satisfactory to the owner that the same has been paid for, and of a bill of sale therefor transferring title thereto free and clear of all encumbrances. And the owner shall pay the contractor or give it credit in this adjustment for all material belonging to the contractor which has been used or purchased by the owner or ordered sent by the owner to other yards.

V

Nothing in this contract contained shall be construed as an acceptance at the present time by the owner of the workmanship and/or material in said hulls numbers 127 to 132, inclusive, or an acknowledgment by the owner that the same have been built
76 according to plans and specifications or according to the rules and regulations of the American Bureau of Shipping.

In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested on the day above stated.

[SEAL.] GROTON IRON WORKS,
By H. F. MORSE,
Vice President.

Attest:
T. A. SHERMAN, *Assistant Secretary.*

Countersigned:
C. W. MORSE, *Director.*

[SEAL.] UNITED STATES SHIPPING BOARD,
EMERGENCY FLEET CORPORATION,
By HOWARD COONLEY,
Vice President.

Attest:
(Sgn.) WAYNE V. O'NEILL, *Secretary.*

Exhibit 3, attached to complaint

(Defendant's Exhibit G)

Contract No. 57, S. C.

Contract made this 11th day of August, 1917, between Grote Iron Works, a corporation organized under the State of Main party of the first part (herein called the contractor), and t United States Shipping Board Emergency Fleet Corporation, corporation organized under the District of Columbia, party the second part (herein called the owner).

For a valuable consideration, the receipt of which is hereby knowledged by both parties, and in consideration of the mutu agreement of the parties, it is agreed as follows:

77 I

The contractor hereby agrees to construct, at his own risk a expense, in accordance with the contractor's drawings and specifi tions (all drawings and specifications before binding on the own must bear the acceptance of the owner or its architect), hereto tached, and made a part of this contract, under the rules and regu tions of the American Bureau of Shipping, 1916 rules, six (6) s cargo-carrying steamers of the Robert Dollar type, of 8,800 de weight tons each.

The contractor agrees to deliver such steamers complete w propelling machinery, auxiliaries, and equipment, according to s

drawings and specifications, to the owner, afloat at the works of the contractor at Groton, Connecticut, as follows:

Two steamers to be delivered on or before October 1st, 1918; two steamers on or before November 1st, 1918; and two steamers on or before December 1st, 1918.

II

1. In consideration of the performance of this agreement by the contractor the owner agrees to pay therefor a lump-sum purchase price of one million three hundred sixty-four thousand dollars ($1,364,000.00) for each of such completed steamers. Such purchase price shall be paid in the following manner:

The owner agrees to cause to be furnished at the mill to the contractor certain steel material which shall be ordered by the contractor, at the price (freight to contractor's yard to be paid by the contractor) and in amounts and dates substantially as shown in Schedule B, hereto attached, which is made a part hereof. Such steel shall be ordered by the contractor for the owner's
78 account, and payment therefor at the price shown in Schedule B shall be made by the owner direct to the concern furnishing such steel. All payments so made shall be deemed payments on account of the purchase price above stated. For the purpose of computing the amounts to be paid by the owner direct to the contractor the cost of such steel is figured approximately at one hundred and fifty-nine thousand seven hundred fifty dollars ($159,750.00) for each steamer. The balance of the purchase price is to be paid direct to the contractor, as follows:

(a) Five per cent (5%) of the contract price of all said steamers fifteen (15) days after signing this contract.

(b) Five per cent (5%) of the contract price of all said steamers thirty (30) days after signing this contract.

(c) Ten per cent (10%) of the contract price of each steamer when the keel thereof is laid.

(d) Ten per cent (10%) of the contract price of each steamer when one-half the frames thereof are in place.

(e) Ten per cent (10%) of the contract price of each steamer when all the frames thereof are in place and stem and stern post are up.

(f) Ten per cent (10%) of the contract price of each steamer when said steamer is one-half plated.

(g) Ten per cent (10%) of the contract price of each steamer when bulkheads and decks are in place.

(h) Ten per cent (10%) of the contract price of each steamer when said steamer is fully plated and the decks and the outside of the steamer are entirely caulked.

(i) Ten per cent (10%) of the contract price of each steamer when said steamer is successfully launched.

79 (j) Ten per cent (10%) of the contract price of each steamer when steel houses are completed and machinery, auxiliaries, and equipment are installed.

(k) Ten per cent (10%) of the contract price of each steamer after completion and steam trial and on delivery to and acceptance by the owner of such completed steamer.

2. In computing the percentages thus to be paid of the purchase price of each steamer under subdivisions (a) to (j), inclusive, and the balance under subdivision (k), the purchase price shall be deemed to be the aforesaid lump-sum purchase price minus the aforesaid estimated cost of steel to be supplied by the owner as above stated.

3. It is agreed that as to all the installment payments provided for in section 1 of this article after the first payment described in subdivisions (a) and (b) of said section 1 no payment shall be deemed to be due at the time fixed unless the amount of said installment, in addition to any theretofore paid, shall be fairly represented in the work of construction of said steamers, together with the value of material assembled at the contractor's yard, and such fact is certified to by the owner's inspector.

4. It is also agreed that the payments described in subdivisions (a) and (b) above may not be made by the owner unless and until the contractor presents to the owner a detailed statement, sworn to by a duly authorized representative of the contractor, that the contractor has material on hand, and/or has paid out cash for material and/or labor, exclusively for the construction of said steamers equal to or in excess of said payments, and the contractor agrees that said payments shall be exclusively used for material used

80 and/or labor employed in the actual construction of said steamers and no part thereof for the contractor's plant, yard machinery, tools, or other yard equipment, or ways.

(5) Before final acceptance by the owner the owner may make at contractor's expense a dock trial of not exceeding six hours or a sea trial at some point convenient to contractor's yard of not exceeding four hours, which shall be to the satisfaction of the owner.

(6) No inspector's certificate given or payment made under the terms of this contract (except on final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the contractor to the inspectors appointed by the owner. It shall be the duty of such inspectors, either personally or by deputies,

inspect all materials and workmanship entering into the construction and to accept such materials and/or workmanship as are in conformity with specifications and promptly to reject all materials and/or workmanship which do not comply with the specifications; such condemnation, if any, of materials to be made by such inspectors before the same are worked or put into construction, if opportunity so to do is afforded by the contractor. Said inspectors shall also have the right of rejection after material is worked or put into construction if facilities are not given for inspection prior thereto. The owner shall not have the right of rejecting any workmanship or material after the same has once been approved in writing by any representative of the owner, and the owner shall, upon request of the contractor, accept or reject, as the case may be, in writing any or all material and/or workmanship immediately.

81 (7) The contractor may at any time, if dissatisfied with the owner's representative at the contractor's works, present a complaint in writing to the general manager of the owner, and, in the event the general manager shall, in his opinion, consider the complaint well founded, the owner shall withdraw said representative and substitute another representative.

(8) The contractor, in estimating the above lump-sum purchase price, has estimated the turbines, boilers, auxiliaries, machinery, and other material required for the construction of the steamers, at the current market prices stated in Schedule C. The contractor agrees not to make any commitments with respect to any of the aforesaid turbines, boilers, auxiliaries, machinery, and other material without the written approval of the owner, and that in the event the owner shall be able to purchase the same for any sum less than the prices stated in Schedule C, the owner shall be entitled to such saving, and further agrees that the owner may purchase and deliver the same to the contractor and withhold the price thereof stated in Schedule C from the payments (which in the ordinary course of events would be due upon the use of such items) required to be made by the owner to the contractor under section 2 of this article.

(9) In the event the owner shall at any time, by notice in writing to the contractor, elect or omit from any of the steamers the gun foundations, gun-crew quarters, and magazines, then the lump-sum purchase price stated in section 1 of this article shall be reduced by $16,000 for each steamer affected by such notice.

(10) In the event there shall be any advance in the aver-
82 age actual cost of labor employed in the construction of the steamers over wages set forth in Schedule D, which the contractor warrants to be its typical pay roll, annexed hereto and made a part hereof, such advance shall be added to the lump-sum purchase

price stated in section 1 of this article, provided, however, that before making any commitments for such advance the contractor shall obtain the written approval of the owner.

(11) There shall be an addition or deduction from the lump-sum purchase price payable hereunder to cover the difference between the actual dead-weight tonnage of each steamer and the contracted dead-weight tonnage of 8,800 tons for each steamer, to be arrived at as follows:

In the event that any one of said steamers does not carry a dead-weight of 8,800 tons, including cargo, fuel, stores, water, crew, and effects on a draft not to exceed the maximum corresponding to the British Board of Trade summer freeboard, as shown by a displacement and dead-weight scale to be furnished by the contractor, checked and approved by the owner, the contractor is to make an allowance of one hundred and fifty-five dollars ($155.00) per ton for each ton dead weight that such steamer does not carry; but if any of said steamers will carry a dead weight of more than 8,800 tons, including cargo, fuel, stores, water, crew, and effects on a draft not to exceed the maximum draft allowed by Lloyds, as shown by a displacement and dead-weight scale to be furnished by the contractor, checked and approved by the owner, the owner is to make an allowances of one hundred and fifty-five dollars ($155.00) per ton for each of said tons in excess of said 8,800 tons dead weight, this adjustment to be added to or deducted from the balance of the contract price under subdivision (j).

83

III

The owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions not materially affecting the general designs of the steamer as the owner may deem necessary. The contractor agrees to accede to and carry the same into effect upon proper compensation or allowance being agreed therefor, as though such alterations, omissions, additions, or substitutions were originally provided for in this contract. If by reason thereof the cost of the construction hereunder shall be increased, then the sum to be paid by the owner to the contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agreed as to the effect of such alterations, omissions, additions, and substitutions or the price thereof, the dispute shall be determined as provided by Article VII hereof. If the contractor

be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect or default of the owner, or by reason of alterations or additions by the owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the contractor but not delivered, or by reason of strikes, fire, lightning, earthquake, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of manufacturers to deliver material or machinery which the owner agrees to cause to be furnished to the con-
84 tractor, pursuant to section 7 of Article II hereof, or by reason of instructions given by the owner under Article XI hereof, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VII hereof.

IV

The contractor agrees to insure and keep insured at its own expense for the benefit of the owner, in insurance companies satisfactory to the owner, said steamers and all materials and supplies for and to be used in construction under this contract against any and all damage by fire and marine risks, lightning, settling of staging, breakage of ways, and risks of launching during such construction and until final completion and delivery, such insurance to be in the usual form and to cover the interest of the owner for an amount not less than the amounts of the installments of payment, which, from time to time, have been made: Provided, That the amount of insurance required shall not exceed, at any time, the amount available in the insurance market.

V

It is agreed that if the contractor shall materially fail to carry out the provisions of this contract and shall continue in default for a period of sixty days after notice thereof from the owner or its inspectors, or if the contractor shall fail to make progress on the work satisfactory to the owner for a period of sixty days after notice, then the owner shall have the power and right to enter into and take possession of said steamers and all materials and appli-
85 ances in connection therewith, and in a reasonable and economical manner, for account of the contractor, to complete the work called for in this contract at the yards of the contractor or

otherwise. After taking over the work in this manner, the owner shall pay the contractor on account of profit only a reasonable rent for the contractor's yard and facilities used.

Provided, however, That if the contractor can show to the satisfaction of the general manager of the owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which he had no control, the contractor shall be allowed such opportunity as the general manager of the owner may deem reasonable to complete the work within the time prescribed by this contract.

VI

It is agreed that as the payments provided for herein are made by the owner on account of materials ordered by or assembled or set up in the yard of the contractor or used in the construction hereunder, the same to the extent of the payments made shall become the property of the owner. This change of title, however, shall not be construed as a waiver by the owner of its right to object if the terms of this contract have not been complied with, nor construed as acceptance of any work which fails to fulfill the requirements of this contract.

VII

In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by Washington L. Capps, the general manager of the owner. or his successor at the time in office, and his decision shall be final and binding upon the parties.

86

In the case after delivery of a completed steamer to the owner under this contract (but only in that event, the contractor shall deem that it is aggrieved by any decision of the general manager as to any disputed matter hereunder of any kind and shall give notice to the owner to that effect within sixty days after delivery or after final payment by the owner, such matter shall be determined by a board which shall consist of three naval architects or engineers or experts to be appointed, one by the owner, one by the contractor, and the third arbitrator shall be selected by the two arbitrators first chosen, and if they can not agree on such third arbitrator, then the latter

shall be named by the Classification Society under which the steamers are being constructed. Such board shall, within thirty days after submission of such matter to it, determine what, if any, further sum shall be due by the owner to the contractor hereunder on account of such delivered steamer, and its finding (made by a majority of the board) shall be conclusive on both parties.

VIII

It is agreed by both parties that time is of the essence of this contract. The contractor agrees to commence and carry through to completion the work under this contract with dispatch, and that it will not enter into any other contract or undertake any
87 other work or service at its yards which will interfere in any material manner with the completion of the work undertaken hereunder.

Should the contractor succeed in delivering any of said steamers to the owner complete before the dates above provided, the owner agrees to pay, as premium for advanced delivery for each completed steamer so delivered, the sum of three hundred dollars ($300) per day for each and every day gained by such advanced delivery. Should the contractor fail to deliver any of said steamers on the dates herein fixed, the contractor agrees to pay the owner, as liquidated damages, on each such steamer three hundred dollars ($300) for each and every day of delay in delivery of such steamer; but it is hereby agreed that the total premium or liquidated damages so to be paid shall in no case exceed the sum of twenty-five thousand dollars ($25,000) for any such steamer. Premiums or liquidated damages shall be added to or subtracted from the final payment hereunder.

IX

The contractor agrees to deliver the steamer to the owner free from any lien or encumbrance. In the event of the filing of any lien or encumbrance against said steamers before final payment on account of any person, firm, or corporation furnishing labor or materials for said construction under this contract, the owner may satisfy the same out of any amount not paid to the contractor hereunder, or the owner may, at its option, withhold the amount thereof from any installment payment thereafter coming due hereunder.

X

The contractor agrees to protect the owner from all claims arising from accidents or casualties to employees or workmen on or

88 about the work covered by this contract and to indemnify the owner against the same.

The contractor shall be responsible for all claims, if any, made against the owner for any infringements of patents or patent rights and for the use of any patented articles, and shall defend and save harmless and indemnify the owner against all such claims and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringements of patents or patent rights, or of the use of any patented articles, provided that the owner will, in all instances, notify the contractor of any claims made against it by reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the contractor of any suit or suits brought against it therefor and give the contractor an opportunity to defend same, and provided that no payment shall be made by the owner unless with the consent of the contractor or pursuant to a decree by a proper court in such litigation, and provided that the contractor shall not be liable in the event the owner specifically orders the use of the patent or patented article, whether or not the existence of the patent be known to the parties hereto.

XI

The contractor will comply with all instructions as to wages or conditions of employment of labor on this contract given to it in writing by the owner. If by reason of any such instruction the cost of any steamer hereunder shall be increased, then the sum to be paid by the owner to the contractor as herein provided for such steamer shall be increased by such amount. Such amount shall be agreed upon by the parties, and, if not agreed upon, shall be determined as provided in Article VII hereof.

89 XII

This contract may not be assigned by the contractor without the consent of the owner in writing; Provided, however, That nothing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the contractor for the purpose of obtaining credit for furthering the construction hereby undertaken, but the owner may by writing made such prohibition.

XIII

Payments hereunder shall be made by the owner by check addressed to the contractor by mail at 50 Broad St., New York, N. Y.

In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

[SEAL.] GROTON IRON WORKS,
By B. W. MORSE, *Secretary.*

Attest:
B. W. MORSE, *Secretary.*
Countersigned:
H. F. MORSE, *Vice Pres. and Director.*

[SEAL.] UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
By EDWARD N. HURLEY,
President.

Attest:
LESTER SISLER, *Secretary.*

90

SCHEDULE B

This schedule is subject to approval of owner's representative.

Groton Iron Works, the contractor under the annexed contract, will, from time to time, furnish the owner with schedules of steel material for the construction of steamers under the annexed contract, which the owner agrees, as provided in section 1 of Article II of the annexed contract, to cause to be furnished as soon as practicable after the receipt of such schedules from the contractor, of an aggregate amount of 2,250 tons of plates per steamer, 760 tons of shapes per steamer, 145 tons of rivots per steamer, 20 tons of checkered plates per steamer, 15 tons of rounds per steamer, and 5 tons of squares and flats per steamer. The price of steel material on which this contract is based is 2½ cents per pound base, plus full extras per plate, structural and bar cards, dated, May 1, 1916, September 1, 1909, and July 1, 1916, respectively, f. o. b. Pittsburgh.

SCHEDULE C

This schedule must be approved by the owner's representative.

Propelling machinery

Geared turbines (Curtis) from G. E. C. (del.)	$75,000
Boilers (3 W. T.) B. W.	58,000
Shafting, thrust bearing & wheels	30,000
Pumps (direct acting)	9,000
Pumps, centrif.	1,700
Evaporator and feed heater	2,000
Lub. oil filter and pump	150
Fuel-oil system (White)	3,200
91 Main condenser	13,500
Aux. condenser	3,200
Stern tube	25,000
Stack, breeching & all steam eng., piping & material	25,000
	$224,250

F. o. b. contractor's works

Hull machinery

Windlass	$4,000
Gypsey	1,250
8 single winches, at $1,000	8,000
2 double winches, at $1,300	2,600
Hand pump	800
Steering gear & hand & telemotor	5,300
Refrigerating machine	1,500
Generating set	2,000
	$25,150

SCHEDULE D

Schedule of wages referred to in Article II, sec. 2, of annexed contract between Groton Iron Works and corporation

Machinists	$2.50 to 4.00
Machinists helpers	2.25 ——
Pipe fitters	2.75 to 3.50
Pipe fitters helpers	2.25 ——
Laborers	2.00 to 3.00
Ship fitters	3.00 to 3.75
Ship fitters helpers	2.25 to 2.75
Drillers	2.50 to 3.50
Drillers helpers	2.50 to 2.50
Heaters	2.25 to 2.75
Holders on	2.75 to 3.00
Riveters	3.00 to 4.00
92 Chippers & caulkers	3.00 to 3.50
Blacksmiths	3.50 to 4.25
Blacksmith helpers	2.50 to 2.75
Boiler makers	3.00 to 4.50
Joiners	2.75 to 4.00
Joiners helpers	2.00 ——
Electricians	3.50 to 4.00
Electrician helpers	2.00 to 2.50
Carpenters	2.50 to 4.00
Carpenters helpers	2.25 ——
Coppersmiths	3.50 ——
Plumbers	3.25 to 3.75
Plumber helpers	2.25 to 2.50
Caulkers	3.50 to 4.00
Beatlers	2.50 ——
Reamers	2.75 ——
Tool grinders	3.25 ——
Band sawyers	4.00 ——
Big sawyers	3.00 ——
Acty. burners	2.75 ——
Pattern makers	4.50 ——
Teams (double)	5.00 ——
Saw filers	2.50 ——
Riggers	3.00 to 4.00
Plankers	3.25 to 3.75
Rivet passers	2.00 to 2.50
Fasteners	2.75 to 4.25

This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision, satisfactory in form and terms to the United States Shipping Board Emergency Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the contractor or by sub-contractors and/or providing for the payment of extra compensation for overtime work, will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
By W. L. CAPPS.
GROTON IRON WORKS,
By H. F. MORSE, *V. P.*

Exhibit 4, attached to complaint

(Defendant's Exhibit H)

Contract No. 225, S. C.

Contract made this 20th day of April, 1918, between Groton Iron Works, a corporation organized under the laws of the State of Maine, party of the first part (herein called the contractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the owner), representing the United States of America, party of the second part.

For a valuable consideration, the receipt of which is hereby acknowledged by both parties, and in consideration of the mutual promises of the parties, it is agreed as follows:

I

1. The contractor agrees to maintain upon a suitable site a complete shipbuilding plant, including office buildings, shops, building slips, plant equipment, and appurtenances, including arrangements for adequate fire protection, fencing, and/or other necessary arrangements for protection of the shipyards and vessels under construction against trespassers, necessary and proper hygenic and sanitary conditions, adequate to assure the construction, completion, and delivery of the vessels.

2. The contractor hereby agrees to construct at its own risk and expense, in accordance with the contractor's drawings and specifications (all drawings and specifications, before binding on the owner must bear the acceptance of and approval by the owner or its duly authorized representative), hereto attached and made a part of this contract, under the rules and regulations of the American Bureau of Shipping and/or Lloyd's, six (6) steam, steel single-screw cargo vessels of the Moore & Scott type, based on that company's plans, specifications, etc., used on contract No. 152, of 9,400 tons dead weight carrying capacity each and eleven (11) knots speed at deep load draft.

The contractor agrees to deliver said vessels complete with propelling machinery, auxiliaries, and equipment, with full military requirements, according to said drawings and specifications, to the owner, afloat at the works of the contractor at Groton, Conn., as follows:

The first vessel on or before January 15, 1919; the remaining five vessels, one every thirty days thereafter.

II

1. In consideration of the performance of this agreement by the contractor, the owner agrees to pay therefor a lump-sum purchase price of one million seven hundred ten thousand eight hundred dollars ($1,710,800) for each of such completed vessels. Such purchase price shall be paid in the following manner:

2. The owner agrees to use its best efforts to cause to be furnished f. o. b. the mill to the contractor certain steel material, which
95 shall be ordered by the contractor, at the basic prices (freight to contractor's yard to be paid by the contractor), and in amounts and at the time substantially as indicated in Schedule B, hereto attached, which is made a part hereof. Such steel shall be ordered by the contractor for the owner's account, and payment therefor at the prices shown in Schedule B shall be made by the owner direct to the concern furnishing such steel. All payments so made shall be deemed payments on account of the purchase price above stated.

3. The method of payment to the contractor and of making advances on its account shall be as follows:

Within thirty days after signing this contract, ten per cent (10%) of the purchase price of all the vessels shall be deposited in the name of the owner with a depositary or depositaries designated by the contractor and approved by the owner. The money so deposited shall be withdrawn and used only in payment for material delivered at the works of the contractor, inspected and passed by the owner or the

duly authorized representative of the owner, and for labor expended on the vessels, and to reimburse the contractor for cash actually paid out upon contracts for propelling and/or auxiliary machinery and boilers under subcontracts or agreements approved by the owner's representative, and to reimburse the contractor for such part of his overhead expense as may be fairly applicable to the work being done by him under this contract, such overhead expense to be based on the proportion of the direct labor expended on work upon the vessels herein contracted for, to the total direct labor on all vessels being constructed by the contractor, all as approved by the duly authorized representative of the owner; and no part thereof
96 shall be used for the contractor's plant, yard, machinery, tools, or other yard equipment or ways. Such withdrawals shall be made only upon checks or drafts drawn by the contractor and countersigned by the duly authorized representative of the owner. Such checks or drafts will be countersigned only upon receipt of and in accordance with vouchers for material and/or labor and/or operating and overhead expenses which have been signed by the contractor and approved in form and substance by the authorized representative of the owner. The title to such deposit and interest thereon shall be and remain in the owner until withdrawn as aforesaid.

In the event of any default of the contractor hereunder, the owner upon its notice to the depositary or depositaries of such default shall have the right to withdraw upon its sole order the said deposit or any part thereof.

There shall also be deposited, from time to time, upon request of the contractor, such additional sums as, in the opinion of the owner's supervisor, may be required: Provided, That the total of the sums so to be deposited shall not in any event exceed the total amount payable to the contractor under this contract.

Upon the delivery of each vessel to be constructed under this contract, an examination may be made of the contractor's accounts by the owner's auditors and the approximate amount of the contractor's profit on that vessel determined, whereupon there may be paid to the contractor, from the deposit aforesaid, fifty (50) per cent of said estimated profit.

When ninety-five (95) per cent of the entire contract price has been thus paid out, nothing further shall be disbursed or paid by the owner until the completion of the contract. Upon a final
97 adjustment, including allowances or deductions for bonuses, or liquidated damages, the cost of changes and extras, if any, the balance due, including retained percentages of profit on vessels previously delivered, shall be paid in cash to the contractor.

4. Before final acceptance of each vessel by the owner, the contractor shall make, at contractor's expense, a dock trial of not less than six (6) hours, and a sea trial, at some point convenient to the contractor's yard, of not less than four (4) hours at maximum power, these trials to demonstrate to the satisfaction of the owner's representative that the machinery is up to the requirements of the specifications.

One vessel of the group covered by this contract will, at the option of the owner, be given a standardization trial over one measured mile at load draft, the load to be supplied by the owner.

5. No inspector's certificate given or payment made under the terms of this contract (except the final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the contractor to the inspectors appointed by the owner. It shall be the right and duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction and to accept such materials and/or workmanship as are in conformity with specifications, and promptly to reject all materials and/or workmanship which do not comply with the specifications, such condemnation, if any, of materials to be made by such inspectors whenever defects are discovered prior to the final
98 acceptance of the vessel by the owner. Notice of rejection shall be in writing, signed by a designated representative of the owner.

6. The owner agrees to cause to be furnished to contractor f. o. b. place of manufacture the materials and equipment, in the amounts and at the prices set out in Schedule C hereto attached. In the event that the owner shall purchase any or all of such materials or equipment at prices less than those set out in Schedule C, the owner shall be entitled to the saving.

7. It is agreed that the wages paid shall be those fixed by the Federal Adjustment Wage Board for the New York district, effective April 22, 1918. In the event the Adjustment Board shall make any general increase in the scale of wages, the net increase in labor cost for the vessels shall be borne by the owner; in the event of any decrease the owner shall receive the sole benefit thereof. If Sunday, holiday, or overtime work be resorted to, it shall be without additional expense to the owner unless specifically authorized by the owner in advance.

8. In the event of any increase in freight rates over those in effect at the date of this contract the owner agrees to pay or credit to the contractor such additional sums as it has actually paid for freight

because of such increased rates upon materials, supplies, and equipment installed or used in said vessels. No claim for such increased freight charges will be considered by the owner unless accompanied by a copy of the freight tariffs in effect at the date of this contract and a copy of the tariff containing such increased rate, the original or duplicate original of bill of lading or shipping receipt and paid freight bill, and such other documents as may be necessary to determine accurately what sum is due the contractor.

99 9. The owner shall make a deduction at the rate of one hundred eighty-two dollars ($182.00) per ton (or any part thereof) to cover the difference between the actual dead-weight tonnage and the contracted dead-weight tonnage of 9,400 tons, provided that no deduction shall be made for deficiency due to changes or alterations in the vessels, or any of them, made pursuant to the owner's instructions.

The actual tonnage of each vessel shall be determined by her ability to carry a dead weight of 9,400 tons, including cargo, fuel, stores, water, crew, and effects on a draft with summer freeboard, as determined by the British Board of Trade rules, as shown by a displacement and dead-weight scale to be furnished by the contractor, checked and approved by the owner. The amount of deduction for such tonnage deficiency when determined shall be deducted from the contract price. The vessel contracted for includes full military extras, but the weight of said military extras, the difference in weight between the originally contemplated 2,800 h. p. turbine and the 3,000 h. p. turbine to be used in these vessels, the difference in weight between the original contemplated one-ton ice machine and the two-ton machine to be used, and auxiliaries the weight is excess of those called for in contract #152 with Moore & Scott for the same type of vessel as those contracted for herein, and the net effect of changes ordered by the owner shall be allowed for as if it were dead weight.

10. The owners, inspectors, auditors, or other duly authorized representatives shall have full and free access to the works of the contractor and to all work and material and all accounts, records, and original entries, vouchers, and supporting papers of the contractor.

In order that the owner may keep in touch with the progress
100 and cost of the construction of the vessels, the contractor shall keep its books in such a way as to disclose readily and accurately all information necessary to determine costs, expenses, and charges in connection with the construction of the vessels hereunder.

11. The contractor agrees to procure and thereafter maintain insurance in amounts and form to cover contingencies during the periods and on such properties as the owner shall require, and to make recommendations to the owner regarding the various risks

upon which insurance should be carried. The policies shall provide that the loss, if any, shall be payable to the owner for the use of the owner and/or the contractor, as their respective interests may appear. Owner may dispense with insurance, in whole or in part, or the owner may itself carry the risk, in either of which event the contract price shall be reduced by an amount corresponding to the cost of said insurance so waived or risk carried by the owner.

III

1. The owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions not materially affecting the general design of the vessel as the owner may deem necessary. The contractor agrees to accede to and carry the same into effect, as though such alterations, omissions, additions, or substitutions were originally provided for in this contract. If by reason thereof the cost of the construction hereunder shall be increased, then the sum to be paid by the owner to the contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered
101 less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agreee as to the effect of such alterations, omissions, additions, and substitutions or the price thereof, the dispute shall be determined as provided by Article VI hereof. Whenever possible the amount by which the purchase price shall be so increased or diminished shall be agreed upon at the time the changes are ordered.

2. If the contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect, or default of the owner, or by reason of alterations or additions by the owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the contractor but not delivered, or by reason of strikes, fires, lightning, earthquake, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of manufacturers to deliver material or machinery which the owner agrees to cause to be furnished to the contractor, pursuant to section 7 of Article II hereof, or by reason of instructions given by the owner under Article X hereof, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof or by any other cause beyond the reasonable control of the contractor. Provided, that no request for extension of the contract time shall be considered unless the contractor, within ten (10) days from the

urrence of an alleged cause of delay, shall notify the vice presi-
nt of the owner in writing of the facts and circumstances in each
e and of the extent to which the contractor claims that the com-
pletion of the vessel is thereby delayed; and provided further
that the owner may, without prejudice to the rights of the
contractor, reserve his decision upon any and all claims for
ension until the completion of the vessel, the work in the mean-
ne not to be discontinued or delayed on account thereof. In the
ent that parties shall not agree as to such extension, such extension
all be determined in accordance with Article VI hereof.

IV

The progress of the work must at all times be satisfactory to the
ner. Upon any failure or omission of the contractor to make such
tisfactory progress (unless caused by circumstances beyond its
ntrol) the owner may declare this contract forfeited. In that
ent the owner may immediately enter the shipyard, take posses-
on of it and its facilities, the vessels, materials, and equipment.
ne owner shall thereupon cause to be taken and filed with the
nited States Shipping Board a full and complete statement and
ventory of all work done or begun on or about the vessels and of
l materials on hand applicable thereto; the owner may proceed with
e completion of the vessels in accordance with this contract either
the shipyard with its equipment and facilities or elsewhere, by
ntract or otherwise, and in its discretion use for this purpose all
itable materials on hand and included in the inventory.
Provided, however, that if the contractor can show to the satisfac-
on of the vice president of the owner reasonable industry and good
ith in the prosecution of the work hereunder, and that the delays
ve been caused by circumstances over which it had no control, the
ntractor shall be allowed such opportunity as the vice president of
ne owner may deeem reasonable to complete the work.

V

It is agreed that title to all vessels, either completed or under con-
ruction, in so far as they shall have been inspected and approved by
ne owner, shall be in the United States of America, and that the
tle for all material for the furtherance of work under this contract,
owever and by whomsoever contracted for or assembled or set up in
ne shipyard or used in the construction of the work under this con-
act, shall be in the owner at all times. Nothing contained herein,
owever, shall be construed as a waiver by the owner of its right
o direct the replacement of unsatisfactory workmanship and/or
aterials.

VI

In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the vice president of the owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case, after delivery of a completed vessel to the owner under this contract (but only in that event), the contractor shall deem that it is aggrieved by any decision of the vice president as to any disputed matter hereunder of any kind, and shall give notice in writing to the owner to that effect within sixty (60) days after
104 delivery or after final payment by the owner, such matter shall be determined by a board which shall consist of three naval architects or engineers, or experts to be appointed, one by the owner, one by the contractor, and the third arbitrator shall be selected by the two arbitrators first chosen; and if they can not agree on such third arbitrator then the latter shall be named by the classification society under which the vessels are being constructed. Such board shall, within thirty (30) days after submission of such matter to it, make its determination and its findings (made by a majority of the board) shall be conclusive and binding upon both parties.

VII

It is agreed by both parties that time is of the essence of this contract. The contractor will commence and carry through to completion the work under this contract with all possible dispatch, will give precedence in its plant or plants to the work hereunder, subject only to the prior rights, if any, of a department of the United States of America, and will not enter into any other contract or undertake any work or service at its works which will interfere in any material manner with the completion of the work undertaken hereunder.

Should the contractor succeed in delivering any of said vessels to the owner complete before the dates above provided, the owner agrees to pay, as premium for advanced delivery for each completed vessel so delivered, the sum of three hundred dollars ($300) per day for each and every day gained by such advanced delivery. Should the contractor fail to deliver any of said vessels on the dates herein fixed (or, as extended on account of the causes hereinbefore set out

105 in Article III, section 2), the contractor agrees to pay the owner, as liquidated damages on each such vessel three hundred dollars ($300) for each and every day of delay in delivery of such vessel; but it is hereby agreed that the total premium or liquidated damages so to be paid shall in no case exceed the sum of fifteen thousand dollars ($15,000) for any such vessel. Premiums or liquidated damages shall be added to or subtracted from the final payment hereunder. Any extensions of time for the completion of the vessels or any extension of time granted to the contractor shall not operate to give to the contractor any bonus upon vessels delivered during such extended time, but such extensions shall operate to defer the time from which liquidated damages shall run.

VIII

The contractor agrees to deliver the vessels to the owner free and clear of any lien or encumbrance. The contractor further agrees upon the delivery of each vessel to deliver to the owner all papers and documents necessary and/or convenient to confer upon the owner a full and unencumbered title to such vessels including classification certificates as herein provided, together with a full release by the contractor to the owner waiving all further claims or demands of any nature, except any claim or demand in regard, and to the extent, to which the provisions of Article VI have been and/or are invoked. When a payment is to be made hereunder, the owner may require evidence satisfactory to it to be furnished showing what obligations for labor and materials, supplies or equipment used or to be used in the construction of the vessels hereunder, are unpaid, and the owner may at its option, out of any amount
106 not paid to the contractor hereunder, withhold such amount as may be necessary to satisfy such obligations or with the consent of the contractor satisfy the same. In the event of the filing or attaching of any lien or encumbrance (whether valid or invalid) against the vessel before the final payment, the owner may at its option out of any amounts not paid to the contractor hereunder withhold such amount as may be necessary to satisfy such lien or encumbrance, or may satisfy or remove the same. The owner will not exercise its option to satisfy or remove any lien or encumbrance if the contractor desires to contest it, provided that the contractor will immediaely take such steps as in the judgment of the owner will prevent such lien or encumbrance from delaying the construction or delivery of the vessels hereunder, and will indem'ify and save the owner harmless from any costs, charges, or damages incurred by reason of the contesting of such lien. It is hereby further stipulated and agreed by the contractor for itself and on its own account

and for and on account of all person, firms, associations, and corporations furnishing labor and materials for said vessels that this contract is upon the express condition that no lien or rights in rem, of any kind, shall lie or attach upon or against any of said vessels or their machinery, fittings, or equipment, or the materials therefor or any part thereof, of either for or on account of any work done upon or about said vessels, machinery, fittings, equipment, or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause or thing or of any claim or demand of any kind, except the claims of the owner.

The contractor agrees to pay all taxes, if any, which may be assessed or assessable against the materials on hand and the
107 vessels under construction up to the time said vessels shall be accepted by the owner. The contractor further agrees to pay all income taxes, excess-profit taxes, and all other municipal, State, or Federal taxes which may be assessed or assessable on account of this contract.

IX

The contractor agrees to protect the owner from all claims arising from accident or casualties to employees, workmen, or other persons, in, on, or about the work covered by this contract, and to indemnify the owner against the same.

The contractor shall be responsible for all claims, if any, made against the owner for all infringements of patents or patent rights and for the use of all patented articles, and shall defend and save harmless and indemnify the owner against all such claims, and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringement of patents or patent rights, or of the use of patented articles, provided that the owner will, in all instances notify the contractor of any claims made against it by reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the contractor of any suit or suits brought against it therefor and give the contractor an opportunity to defend the same, and provided that no payment shall be made by the owner unless with the consent of the contractor or pursuant to a decree by a proper court in such litigation. Where the owner specifically orders the use of the patent or patented article, whether or not the existence of the patent is known to the parties hereto, the owner will hold the contractor harmless from any
108 expense, loss, or damage arising from a claim of the infringement or use of such patent or patented article, provided that the contractor notifies the owner as soon as such a claim is made and obeys the instructions of the owner in connection therewith.

X

This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision, satisfactory in form and terms to the United States Shipping Board Emergency Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the contractor or by subcontractors and/or providing for the payment of extra compensation for overtime work, will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof. If by reason of any such instruction the cost of any vessel hereunder shall be increased, then the sum to be paid by the owner to the contractor as herein provided shall be agreed upon by the parties, and if not agreed upon, shall be determined in Article VI hereof.

XI

This contract may not be assigned by the contractor without the consent of the owner in writing, provided, however, that nothing in this contract shall be construed as prohibiting the assignment of payments due, or become due, to the contractor, for the purpose of obtaining credit for furthering the construction hereby undertaken, but the owner may by writing make such prohibition.

In order to effectuate the provisions of Article IV hereof,
109 the contractor agrees that every contract made by it for the furnishing to it of parts, materials, supplies, machinery, and equipment, or the use thereof for the purpose of constructing the vessels agreed to be constructed hereunder, will in its terms be made assignable to the owner.

XII

No Member of or Delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this article shall not apply to any contract within the operation or execution of section 116 of the act of Congress approved March 4, 1909 (35 Stats. 1109).

XIII

Should the contractor become insolvent, make an assignment, or commit any act of bankruptcy, the owner may and is hereby empowered forthwith to enter, take possession of, and complete the work without giving any notice thereof to the contractor.

XIV

The contractor agrees to procure and keep in force at its own expense, in some company or companies approved by the owner, all such bond or bonds for the protection of claims and/or liens of laborers and/or material men as may be required by the laws of the United States.

XV

In addition to the customary precautions that have heretofore been taken by the contractor for the guarding and protection of its plant and of the work being carried on therein, the contractor
110 shall, at its own cost, provide such additional watchmen, guards, and devices for the protection of its plant property and of the work in progress for the United States Shipping Board Emergency Fleet Corporation, against espionage and acts of war and any damage or delay that might result therefrom as may be required by the United States Shipping Board Emergency Fleet Corporation. Any saving in insurance by reason thereof to accrue to the contractor. Or the owner, at its option, may do the work or may require the contractor to do it, the owner paying the cost thereof, in either of which events the owner shall receive the sole benefit of any reduction in insurance. Should the owner do the work or pay the cost thereof, all devices and fixtures installed and other improvements made or purchased by the owner, although affixed to the realty shall be and remain the owner's property, with the right to remove the same upon the termination of the contract. The contractor shall have the right to purchase such fixtures and improvements upon the completion of the contract on the basis of cost to the owner, less the amount received by the owner by way of reductions in premium and less a reasonable allowance for depreciation, if any. If the price can not be agreed upon, it shall be determined by the arbitrator appointed in the manner provided for in Article VI. In the event the owner installs the fixtures or improvements or pays the cost thereof, the contractor agrees that it will execute such chattel mortgage, bill of sale, or other instrument which may be recorded for the purpose of protecting the owner's right and title in and to the property so furnished or paid for by it.

111 XVI

The contractor agrees to comply with all laws, rules, regulations and requirements of the departments of the United States affecting the construction of works, plants, and vessels, in or on navigable waters and the shores thereof, and all other waters subject to the

control of the United States, and to procure at its own expense all permits from the United States, State, and local authorities which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State, and local laws in any way affecting the work carried on under this contract.

XVII

As an inducement to the owner to enter into this agreement, the contractor represents that the site for its shipbuilding plant at Groton, Connecticut, is suitable in all respects. That there is ample water for the launching of the vessels to be constructed under this contract with unobstructed navigation to the high seas. Contractor further represents that there now exists or will be provided by the contractor ample facilities for the transportation of material and employees to contractor's yards as well as housing facilities for such employees. The contractor agrees that, in the event it become necessary to provide for or to supplement any of the matters herein mentioned, it will be done by the contractor, free of expense to the owner and without any delay whatsoever with regard to the construction and delivery of the vessels under this contract.

XVIII

The progress of the work shall be at all times satisfactory
112 to the owner. Should the progress of the work not be satisfactory to the owner then the owner may, upon thirty (30) days' written notice to the contractor, cancel this contract as to further performance thereof. Thereupon the contractor shall complete only such vessels, or parts of vessels, as the owner shall direct in writing. The cancellation shall not affect the terms of the contract as to the vessels completed or directed to be completed.

The contractor shall be reimbursed for losses sustained by such cancellation. In computing such losses there shall be included for each vessel under construction a proportionate part of the estimated profit on a completed vessel. Such proportionate part shall not exceed the percentage which the cost of the vessel under construction bears to the cost of a completed vessel. In computing profit or cost the average actual experience of the contractor on vessels constructed for the owner shall be taken as the basis of the computation. In computing such losses the following shall not be included:

(a) Profits on vessels not under construction

(b) Profits that the contractor might have earned in other transactions.

If the parties can not agree upon the amount of the loss, it shall be determined on the above basis and by arbitrators, one to be chosen by each party and the third by the two so chosen, and the decision of a majority of the arbitrators shall be conclusive and binding upon the parties hereto.

XIX

If in the opinion of the owner the progress upon the vessels
113 herein contracted for is satisfactory, then at any time prior to June 15, 1918, the owner shall have the option to order from the contractor any additional number of vessels up to six. Such additional vessels shall be similar to those herein contracted for. The contractor agrees to construct such additional vessels so ordered, the terms of this contract governing the construction of such additional vessels in all respects except as to delivery dates which shall be agreed upon.

XX

Payments hereunder shall be made by the owner by check addressed to the contractor by mail at 50 Broad Street, New York City.

In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

[SEAL.] GROTON IRON WORKS,
By E. A. MORSE, *President.*

[SEAL.] UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
By CHARLES PIEZ, *Vice President.*

Attest:
B. W. MORSE, *Secretary.*
Countersigned:
C. W. MORSE, *Director.*
Attest:
LESTER SISLER, *Secretary.*

114 United States Steamship Company, a corporation organized under the laws of the State of Maine, being interested in the foregoing contract as stockholder of the Groton Iron Works, does, for value received and in consideration of the United States Shipping Board Emergency Fleet Corporation entering into such contract, hereby guarantee to the United States Shipping Board Emer-

gency Fleet Corporation the full and faithful performance of said contract according to the terms thereof.

In witness whereof, the United States Steamship Company has caused these presents to be signed by its president and its corporate seal affixed and attested by its secretary, this 20th day of April, 1918.

[SEAL.] UNITED STATES STEAMSHIP COMPANY,
By C. W. MORSE, *President*.

Attest: Secretary.

GROTON IRON WORKS

For 24 9400 D. W. Ship.—Schedule B

	For 1 ship	For 6 ships
Plates	2,200 net tons.	13,200 net tons.
Shapes	900 net tons.	5,400 net tons.
Flats & rounds	50 net tons.	300 net tons.
Rivets	180 net tons.	1,080 net tons.

Price 3¼ cents per pound for plates, 3 cents per pound for shapes, base, and rivets, and 2.9 cents per pound for flats and rounds, f. o. b. mills, Pittsburgh, Pennsylvania, or Chicago, Illinois.

115 The contractor shall furnish the owner at the earliest practicable time schedules showing the amounts and dates when it desires deliveries made. The owner will not undertake to provide any item upon such schedule unless the schedule is furnished to it at least seventy (70) days in advance of the time when such item is desired.

6 9400-ton cargo.

GROTON IRON WORKS, GROTON, CONNECTICUT

United States Shipping Board Emergency Fleet Corporation

Instructions to those submitting proposals:

The following is a list of articles and material that the purchasing division of the Emergency Fleet Corporation is prepared to purchase for contractors. It has been prepared for the convenience of those submitting proposals. The following procedure will be pursued:

Before submitting his proposal the shipbuilder will settle with the general purchasing officer as to what articles are to be obtained through the Fleet Corporation. The columns left blank below will be filled in. In this connection, special attention is invited to the notes at the end of this sheet. When the list has been approved by

the technical department as to the suitability of the equipment proposed, this sheet will become a part of the contract and will be known as Schedule C.

SCHEDULE C

List of material and equipment to be supplied by the purchasing division of the Emergency Fleet Corporation

116–117

Item No.	Article	Make	Size	Number required	Price
1	Marine propelling turbines.		3,000 s. h. p.	6	$95,000 each with spares.
2	Triple expansion marine engines.				
3	Boilers (water tube)		3,200 sq. ft.	18	$14,000 each, including superheaters.
4	Anchor windlasses		2¾" chain	6	$4,830 each.
5	Capstans		9 x 9 warping winch, extended head.	6	$1,100 each.
6	Cargo winches		8¼ x 8"	36	$725 each, $75 spare per ship.
7	Steering gears	Amer. Eng. Co. electric telemeters.	9 x 9"	24	$805 each.
			6 x 9"	6	$6,720 each.
8	Main condensers	Contra-Flo	3,500 sq. ft.	6	$9,500 each.
9	Auxiliary condensers	Contra-Flo	600 sq. ft.	6	$1,900.
10	Mechanical davits				$650 per set.
11	Generator sets	Moore Turbo	15 kw.	12	$1,400 each.
12	Switchboards	Sets			
13	Searchlights	Carlisle & Finch	18"		$355 each, f. o. b. Cincinnati.
14	Radio sets				
15	Electric fans				
16	Rough-turned shaft forgings.				12 cents per lb.
17	Rudder-stock forgings.				18 cents per lb.
18	Lifeboats with complete equipment.	26 ft. complete equipment except releasing gear or tarpaulin complete with spares.			$460 each.
19	Running lamp equipment.				$170 per ship.
20	Anchors				10 cents per lb.
21	Chains				
22	Navigating instruments.				
23	Miscellaneous outfit				
24	Communicating system.				
25	Oil can and oil equipment.				
	Refrigerating machine.	De Laval Dairy Supply Co.	2 ton, installed	6	$1,600 each, including motors; $50 for tank and 6 20-lbs. cans.
	Evaporator		30 ton	6	$900 each.
	Feed-water heater		47,500 lbs.	6	$800 each.

118 The fact that those articles are obtained through the Emergency Fleet Corporation as a matter of convenience to the contractor shall not operate to relieve the contractor from his responsibility for the proper functioning of the articles in question when

worked into or installed in the vessel, the contractor hereby agreeing to assume the full responsibility therefor.

In addition to the items listed, the purchasing division of the Fleet Corporation is able to procure other material and equipment which may be necessary in ship construction. Such additional purchases are to be a matter of agreement and arrangement between the Fleet Corporation and the contractor. In cases where the purchasing division make purchases for the contractor the articles will be charged to the contractor's account at actual cost, plus two per cent to cover the cost of purchasing to the Fleet Corporation.

Exhibit 5, attached to complaint (defendant's Exhibit I)

Agreement made this 26th day of March, 1920, between the Groton Iron Works, a corporation organized and existing under the laws of the State of Maine (hereinafter called the contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America (hereinafter referred to as the owner), party of the second part, witnesseth:

119 Whereas the contractor, now in the hands of receivers appointed by the Superior Court of New London County, Connecticut, is the owner of a shipbuilding yard located at Groton, Connecticut, and another shipbuilding yard located at Noank, Connecticut, at which yards it has been engaged in constructing steel and wood vessels, respectively, for the owner under contract No. 57 S. C. (for six steel vessels of eighty-eight hundred tons dead-weight carrying capacity each, Groton Yard hulls Nos. 1 to 6, inclusive), contract No. 225 S. C. (for six steel vessels of ninety-four hundred tons dead-weight carrying capacity each, Groton Yard hulls Nos. 7 to 12, inclusive), and contract No. 15 W. H. (for twelve wood hulls); and

Whereas an adjustment contract supplemental to No. 15 W. H. was entered into on September 30, 1918, providing for the cancellation of four (4) of the said wood hulls, and the settlement of all claims up to the date of said adjustment contract; and

Whereas construction work upon three (3) of the remaining eight (8) wood hulls has ceased, and the said three (3) hulls remain at the Noank Yard in an uncompleted state; and

Whereas five (5) wood hulls provided for in said contract No. 15 W. H. and the six (6) steel vessels provided for in said contract No. 57 S. C. have been delivered to the owner; and

Whereas work has been suspended on the last three (3) of
six (6) ninety-four hundred ton steel vessels ordered under contr
No. 225 S. C. (hull Nos. 10 to 12, inclusive), and it is intended th
the order for the three said vessels be cancelled; and

120 Whereas the contractor is desirous of repossessing the s
shipyards and property therein, and has been arranging f
the payment of claims of creditors, and it is expected that the d
livery to the contractor by the receivers of the yard and proper
will be ordered by the above-named court on or about March 2
1920; and

Whereas the contractor is also desirous that the owner permit
to complete the three (3) unsuspended vessels under contract No. 2
S. C. (hull Nos. 7 to 9, inclusive); and

Whereas the owner is willing to do so under certain conditions;

Now, therefore, in consideration of the premises and of the mutu
covenants and promises hereinafter contained, it is agreed as follow

ARTICLE I

When this agreement effective

1. The provisions of this agreement are expressly conditione
upon the redelivery of possession, custody, and transfer of owne
ship of the assets of the contractor now in the hands of the receiver
into the hands of the contractor by proper order of the court, th
procuring of the said order by the contractor being a condition pre
cedent to the acquiring by the contractor of any rights hereunder

2. As a second condition precedent to this agreement becomin
effective, the contractor shall procure and deliver to the owner a
agreement by C. W. Morse and Co., Inc., or other owner of assigne
claims against the contractor totalling $1,160,256.16, providing that
in the event that the cost of the nine vessels under contract

121 57 S. C. and 225 S. C. exceeds $16,653,648 (this amount being
subject to modification as provided in Article IV, paragraph
2), and the contractor does not pay the said excess in cost, the claims
of said C. W. Morse and Co., Inc., or other owner shall be sub-
ordinated to the claim of the owner for any excess in cost it shall
have paid, none and no part of said subordinated claims to be paid
until the said excess shall have been repaid to the owner.

ARTICLE II

Basis of agreement

As the fundamental basis of this agreement, the following points
are agreed to as established:

(a) The principal amount now due to the owner for such loans and to the contractor as are secured or intended to be secured by the two mortgages by the contractor to the owner, aggregating $1,800,000, is $1,716,666.67, and the interest due thereon to March 1st, 1920, is $171,440.01.

(b) The validity of said mortgages in form and effect to secure said amount of $1,716,666.67 and interest or in any other respect shall not be questioned or disputed.

(c) Said mortgages shall be extended to mature and become due and payable on July 1st, 1921, by an instrument, in proper legal form and satisfactory to the owner, containing suitable provision by which the whole sum due thereon may mature and become due and payable forthwith, at the option of the owner, upon default by the contractor in payment of either of two series of notes to creditors falling due on or about September 26th, 1920, and on or about March 26th, 1921, or upon default by the contractor in respect of any
122 of the covenants contained in said mortgages or in said instrument extending the same, or upon default of the contractor in the due performance to the satisfaction of the owner of any of the provisions of contract No. 225 S. C. or of this agreement.

(d) The contractor shall be bound by all valid existing obligations of the receivers to the owner, except so far as same are expressly altered or modified by this agreement.

(e) All obligations of the owner to the contractor or to the receivers, arising out of the suspension and cancellation of the three hulls, 10 to 12, inclusive, under contract 225 S. C. are settled and adjusted at the amount of $500,000, which sum, however, shall not be payable in money, but shall be applied after the delivery of the last vessel in the reduction of the principal sum secured by one or the other of said mortgages, as the owner may elect; provided, however, that said amount of $500,000 shall be reduced by such sum as shall be due to the owner from the contractor, by reason of the cost of the nine (9) vessels Nos. 1 to 9, inclusive, under contracts 57 and 225 S. C., running in excess of the sum of $16,155,648, if such excess should occur (the said sum of $16,155,648 being subject to such modifications as are provided for in Article IV, paragraph 2, hereof).

(f) All existing obligations of every kind of the owner to the contractor or to the receivers, arising out of contracts 57 and 225 S. C., including all claims already filed and others of every sort whatsoever, excepting claims for suspension and cancelation herein otherwise provided for, are settled, discharged, and forever disposed of by the agreement of the owner to pay the higher price
123 per dead-weight ton for hulls 1 to 9, inclusive, as set forth in this contract, to wit—$199.16 per dead-weight ton for hulls

1 to 6, inclusive, and $200.00 per dead-weight ton for hulls 7 to
inclusive.

(g) No claims shall be made either by the contractor or by t
owner that the other is under any obligation or that either has a
rights against the other by virtue of a contract between the Unit
States Steamship Company and the owner, dated December 20
1919, and known to the parties by that description.

(h) The title to hulls 7 to 9 is and shall remain in the Unit
States of America, and title to all material, machinery, and/
equipment now or hereafter in the Groton yard of the contract
and intended for the construction and outfitting of said hulls
and shall remain in the owner, but nothing herein shall impair
affect the rights of the contractor to a credit for any of such ma
rial as provided by Article VIII hereof.

(i) The owner will forthwith pay to the contractor in cash t
sum of $250,000 on account of said construction contracts, said su
to be immediately transmitted by the contractor to the receivers
be used by them in the payment of a twenty per cent (20%) di
dend to creditors of the contractor as provided in the order of s
Superior Court of even date herewith, or about said date.

(j) All obligations of the contractor, or of the receivers, by v
tue of the five-party settlement contract, dated, June 19
with reference to the property and affairs of the Groton Park R
Estate Company now remaining unperformed shall be performed a
discharged by the contractor without delay, including the executi
and delivery of any instruments not yet delivered, if any su
there be.

124 ARTICLE III

Cancellations

1. Contract 225 S. C. in so far as respects the three suspend
vessels, hulls 10 to 12, inclusive, is hereby canceled, and the ow
hereby awards, and the contractor hereby accepts, the sum
$500,000 as just compensation and in accord and satisfaction for
said suspension and cancelation, the said sum not to be payable
money, but in the manner provided for in Article II (c).

2. Contract 15 W. H. and its supplements in so far as resp
the three (3) wooden hulls now on the ways of the Noank plant
the contractor in a partial state of completion, are hereby cancel
and the owner hereby awards, and the contractor hereby accepts,

just compensation and in accord and satisfaction for said cancelation, the three hulls now on the ways, one (1) completed Ferris-type wooden ship to be selected by the contractor from a list of available ships furnished by the owner, one (1) Ferris-type hull to be selected by the contractor from a list of available hulls furnished by the owner, and one (1) bill of material, No. 500, which shall be delivered by the owner to the contractor at a place designated by the owner. The liability of the owner as to the furnishing of the said bill of material No. 500 shall extend only to the furnishing of such items thereon as the owner shall have in stock.

ARTICLE IV

Increase in contract prices

1. The owner agrees to pay a lump sum purchase price of $199.16 per dead-weight ton for each of the completed vessels 1 to 6,
125 inclusive, it being agreed that the dead-weight tonnage of each of said vessels 1 to 6, inclusive, shall, for the purposes of this agreement, be taken as 8,800 tons, and to pay a lump-sum purchase price of $200.00 per dead-weight ton for each of the completed vessels 7 to 9, inclusive, it being agreed that the dead-weight tonnage of each of said vessels 7 to 9, inclusive, shall, for the purposes of this agreement, be taken as 9,400 tons. Such purchase price shall be paid in the following manner:

(a) By credits for payments and advances and charges herein provided to be made or heretofore made by the owner.

(b) By the payment by the owner of part or the whole of the actual cost of the completion of vessels 7 to 9, inclusive, as provided for in Article V hereof, and

(c) Upon the completion of contracts 57 S. C. and 225 S. C. and the supplements thereto, the owner will pay in money to the contractor the difference, if any, between $16,155,648 (this amount being subject to modification as provided in paragraph 2 hereof) and the sum of (a) and (b) hereof.

2. The $199.16 per dead-weight ton for vessels 1 to 6, inclusive, and the $200.00 per dead-weight ton for vessels 7 to 9, inclusive, shall constitute the entire compensation to the contractor for the construction of said steel vessels, including compensation for any and all ship construction and incidental costs, whether direct or indirect, and any and all increase either in wages, freight rates, materials, or otherwise, extras and the like, however caused, with the

exception of changes in wages which the contractor may be directed
in writing by the owner or other governmental agency to
126 make after the date of this agreement, and/or changes as to
the construction or design of the vessels, which the contractor
may be directed in writing by the owner to make after the date of
this agreement, in which excepted cases the increase in cost, if any
shall be added to $16,155,648. In the event the cost is decreased by
such changes, the $16,155,648 shall be reduced in an amount equal
to the decrease in cost.

ARTICLE V

Manner of payment of actual cost

1. Up to, but not exceeding, an amount equal to the difference
between $16,155,648 (this amount being subject to modification as
provided in Article IV, paragraph 2, hereof) and the total of the
amounts heretofore paid by the owner to or for the account of the
contractor or the receivers, or charged to the account of the con-
tractor and/or the receivers (less any credits allowed), and properly
chargeable to contracts 57 S. C. and 225 S. C., not however, includ-
ing the amounts secured by the mortgages aforesaid—the owner
shall pay through its district office, or such other office to which may
be transferred the activities of the present district office, the actual
cost (as hereinafter defined) of completing the remaining three ships
under contract No. 225 S. C.

2. Payment of said cost, when due, shall be made by the owner
direct to the vendors or manufacturers of material and equipment
for ship construction purposes; and in general direct to the respec-
tive creditors except that advances shall be made direct to the con-
tractor for the purpose of meeting pay rolls and overhead expenses
approved by the owner as necessary in the completion of the vessels
the average monthly overhead expenses to be paid by the
127 owner not to exceed fifty per cent (50%) of the cost of direct
labor.

3. The actual cost shall consist of:

(a) Such items of actual cash disbursements as the owner may
hereafter approve as proper charges to account of ship construc-
tion and/or plant administration, operation and maintenance.

(b) Such correct charges as may have been or may hereafter be
made by the owner against the contractor for materials, machinery,
equipment, insurance, or any other purpose (other than the prin-
cipal of mortgages) in connection with the ship construction con-
tracts, it being understood that the owner may carry any or all in

surance risks, charging the contractor the customary rate of premium charged by private stock insurance companies for such insurance.

(c) The owner shall be forthwith credited with all proper credits heretofore accrued in connection with any transaction related to ship construction activities, plant operation and plant maintenance, such as discounts, proceeds from use of plant and/or equipment for purposes other than ship construction, proceeds from sales of scrap, proceeds from claims, etc. In the event of such credits arising hereafter, the contractor shall pay the amounts thereof currently to the owner, who shall give the contractor proper credit therefor, provided, however, that any such credits which may hereafter arise directly out of private contracts or private transactions of the contractor with third parties shall not be embraced within the provisions of this clause.

4. Any amount of money in excess of that to be furnished by the Fleet Corporation needed to complete the said vessels shall be furnished by the contractor.

128

ARTICLE VI

Delivery dates

1. The ships under contract 225 S. C. not yet delivered shall be delivered on or before the following respective dates:

Groton Yard hull Nos.	Dates
7	May 5, 1920
8	June 5, 1920
9	July 5, 1920

which dates shall be substituted for the dates of delivery previously agreed upon under said contract No. 225 S. C.

2. The owner hereby waives any claim for delay in ship construction under said contracts Nos. 57 S. C. and 225 S. C. up to and including the date of this contract.

ARTICLE VII

Default

1. Without being limited to the following instances, default shall exist on the occurrence of any one of the following contingencies: Failure to complete contract 225 S. C., as modified by supplemental contracts, the abandonment thereof by the contractor, the adjudication of the contractor as a bankrupt or insolvent, or the appointment of a receiver of all or any part of its property after full hearing, with proper notice, in a court of competent jurisdiction.

2. Delay in delivery of the vessels beyond the dates herein fixed for the completion thereof shall be deemed to be a default only pro

tanto and the liquidated damages for not completing the vessels
dates herein fixed for the completion thereof shall be the sum
129 of $200 for each day of delay, provided, however, that the
delay in delivery shall not have been excused in accordance with the provisions of contract 225 S. C.

ARTICLE VIII

Materials

1. The contractor shall use in the completion of the three (3) vessels under contract 225 S. C. all surplus material left over from contract 57 S. C. which, i nthe opinion of the owners authorized representative, is capable of being so used.

2. The contractor shall, at the request of the owner, surrender to the owner any material delivered at the plant of th' contractor for use in constructing and outfitting the vessels under contracts 15 W. H., 57 S. C., and 225 S. C. and which shall not have been used in the construction and equipment of the said vessels, in which case, after surrender, the owner shall credit the contractor with the amounts heretofore charged by the owner to the contractor or to the receivers for said materials, or if the said materials shall not have been charged to the contractor or to the receivers by the owner, by reason of the fact that the material was not procured or furnished by the owner, then and in that event the owner shall credit the contractor with the price of all said surrendered material charged by the subcontractor or material man. The owner may request the said surrender of material at any time after the owner has determined that said material has or will become surplus, and thereupon the contractor shall surrender the said material.

3. The owner obligates itself to take back, at the request of
130 the contractor, all material delivered at the plant of the contractor for use in constructing and outfitting the vessels under contracts 57 S. C. and 225 S. C. and 15 W. H. and charged by owner to the contractor and which shall not have been used in the construction and equipment of said vessels, in which case, after surrender, the owner shall credit the contractor with the amounts theretofor charged by the owner to the contractor or the receivers therefor.

ARTICLE IX

Credit for past payments

All payments heretofore made by the owner to the contractor or to the receivers, or on account of either, and properly chargeable to

the contractor, which shall not have been returned to the owner, except such sums as may have been advanced by the owner under mortgages, shall be credited upon amounts due hereunder.

ARTICLE X

Representative of Fleet Corporation

The owner shall appoint and pay the salary of a competent representative to be stationed at the plant of the contractor. The duties of such representatives shall include the approval of all vouchers covering disbursements in connection with this agreement and also the functions of referee in connection with the settlement of questions arising thereunder as to the approval of vouchers.

ARTICLE XI

Maintenance of plant

The contractor shall maintain the present plant and its
131 equipment in a manner and condition satisfactory to the owner and suitable for the efficient completion of the ships contracted for.

ARTICLE XII

Release

1. The contractor hereby covenants and agrees to release, cancel, and discharge, and does by these presents release, cancel, and discharge, and agrees to hold harmless the United States of America, the United States Shipping Board, and the Emergency Fleet Corporation, both in its corporate capacity and as representing the United States of America, of and from any and all claims, demands, causes of action, suits, expenses, and all other charges of whatsoever kind or nature which it or anyone whomsoever had, has, or may have against the United States of America, and the Emergency Fleet Corporation, or either of them, by reason of contracts No. 15 W. H., 57 S. C., and 225 S. C., or the supplements thereto up to the date hereof, or by reason of any matter or thing directly or indirectly arising out of, or in any wise appertaining to said contracts or the supplements thereto up to the date hereof, the contractor hereby accepting the agreements and covenants of the owner herein set forth in full settlement, as just compensation, and in accord and

satisfaction of any and all such claims, demands, causes of action, suits, expenses, and other charges, as above mentioned, and of all obligations of the Emergency Fleet Corporation and/or the United States of America, of every kind or character under and by virtue of said contracts or supplements thereto, arising or accruing up to the date hereof.

132 2. The reconciliation of the accounts of the contractor in respect of the construction of wood vessels at the Noank plant with those of the owner, which has been in progress between the receivers and the New York district office of the owner during the past four months shall be continued with respect to items upon which a reconciliation or agreement has not been reached, and any amount found due to the contractor in respect of any of the hulls, (the uncompleted hulls to be paid for on the basis of the degree of completion of each) shall be paid to the contractor, anything contained in this agreement to the contrary notwithstanding, in addition to the wood hulls, wood ship and bill of material No. 500 awarded to the contractor as just compensation for cancellation as provided in Article III, paragraph 2, hereof. If any money should be found due the owner by reason of said reconciliation, the amount thereof shall be paid by the contractor to the owner, or deducted by the owner from any moneys or credit due the contractor.

ARTICLE XIII

Settlement subject to audit

The parties hereto agree that all disbursements, settlements, and adjustments made under, or growing out of this contract shall be subject to such audit, or audits, as may be determined by the general comptroller of the United States Shipping Board Emergency Fleet Corporation, and all books, accounts, records, agreements, documents, or other data in the opinion of the general comptroller necessary for said audit shall be at his or his duly authorized representative's disposal. Any omission, irregularities, or discrepancies found by any future audit shall be subject to adjustment.

183 ARTICLE XIV

Agreement not assignable

This agreement shall not, nor shall any interest herein, be transferred by the contractor to any other person, firm, or corporation save with the consent of the owner in writing.

ARTICLE XV

Participation in agreement

No Member of, or Delegate to Congress, or Resident Commissioner, is or shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom; but this article shall not apply to this agreement so far as it may be within the operation or exception of section 116 of the act of Congress approved March 4, 1909 (35 Stats. 1109).

ARTICLE XVI

Additional papers

The parties hereto agree to furnish or execute and deliver such additional papers, instruments, and certificates as may be deemed reasonably necessary to effectuate the intent of this agreement.

ARTICLE XVII

Former contracts operative

This agreement is supplemental to contracts 15 W. H., 57 S. C., and 225 S. C. and the supplements thereto, and where inconsistent therewith shall be held to govern. Except as herein otherwise provided, the provisions of the said contracts and supplements thereto shall remain in full force and effect.

134 ARTICLE XVIII

Removal of lumber

The owner, or its vendee, will remove lumber at the Noank yard within a reasonable time and so as not to interfere with the use of said yard by a vendee of the contractor.

ARTICLE XIX

Agreement executed in triplicate

This agreement shall be executed in triplicate, and the respective copies shall be known as Parts I, II, and III. Parts I and III shall be delivered to the owner, and Part II shall be delivered to the

contractor. Said respective parts shall be of equal force and effect for any and all purposes.

IN WITNESS WHEREOF the parties hereto have caused this memorandum of agreement to be executed by their proper officers thereunto duly authorized, and their respective corporate seals to be hereunto affixed duly attested, on the day and year first above written.

[SEAL.] GROTON IRON WORKS,
By E. A. MORSE, *President.*

Attest:
DEXTER ROOD, *Secretary.*

[SEAL.] UNITED STATES SHIPPING BOARD,
EMERGENCY FLEET CORPORATION,
By R. B. STEVENS, *Vice President.*

Attest:
JOHN J. FLAHERTY, *Secretary.*
Approved as to form:
W. W. NOTTINGHAM, *Asst. Counsel.*

135 In United States District Court

Answer

To the honorable the judges of the District Court of the United States for the District of Connecticut:

Comes now United States Shipping Board Emergency Fleet Corporation, and for answer to the bill of complaint filed herein by P. Leroy Harwood, as trustee in bankruptcy of Groton Iron Works, complainant, against said United States Shipping Board Emergency Fleet Corporation, defendant, alleges:

1. The defendant admits the allegations of paragraph 1 of said bill, except so much of said paragraph as alleges that said Groton Iron Works was authorized primarily for the purpose of building wooden and steel vessels for the defendants to be operated by the defendant in the commerce of the United States of America, which allegation is denied.

2. The defendant admits the allegations of paragraph 2 of said bill of complaint, except so much thereof as alleges that said trustee is in possession of all the property and assets of Groton Iron Works, as to which this defendant has no knowledge nor information sufficient to form a belief, and therefore denies the same.

3. This defendant alleges that it is a corporation organized by virtue of and under the shipping act, 1916, a law of the United States, and under the act of Congress of March 3rd, 1901, entitled "An

Act to Provide a Code of Laws for the District of Columbia," and during all of the times mentioned in said bill of complaint acted as
an agency or instrumentality of the United States under
136 powers granted to the President by the emergency shipping
fund provision of act of Congress of June 15th, 1917, and by the President delegated to this defendant by an Executive order of July 11th, 1917, made pursuant to the provisions of the act of Congress last mentioned. Except in so far as herein admitted, the allegations of paragraph 3 of said bill of complaint are denied.

4. This defendant admits the allegations of paragraph 4 of said bill of complaint.

5. This defendant admits the allegations of paragraph 5 of said bill of complaint.

6. This defendant admits that a contract was entered into, in its name, on or about the 15th day of June, 1917, substantially as set forth in paragraph 6 of said bill of complaint and as set forth in Exhibit 1 attached to said bill of complaint. This defendant alleges that the said contract entered into in its name was entered into by and in behalf of the United States under the acts of Congress hereinbefore referred to. Except as herein admitted, this defendant denies that said contract was entered into by this defendant as part of its policy in constructing and operating merchant vessels or otherwise, and that at the time referred to in said bill of complaint it had any policy whatsoever with respect to the construction and operation of merchant vessels.

7. This defendant admits the allegation of paragraph 7 of said bill of complaint that Groton Iron Works commenced the construction of certain hulls therein referred to, and admits the completion and delivery to this defendant, representing the United States, of two of said hulls and that it partially constructed six other of said
hulls, but this defendant denies that the said construction and
137 delivery were in accordance with the said contract, Exhibit 1,
and further denies that said Groton Iron Works was prevented by the acts of this defendant from so performing said contract, and further denies any waiver of the performance of said contract.

8. This defendant admits so much of paragraph 8 of said bill of complaint as alleges that on or about September 30th, 1918, Groton Iron Works entered into a contract with the defendant, as set forth therein and as shown in Exhibit 2, attached to said bill of complaint, and this defendant alleges that it entered into said contract in behalf of the United States under the acts of Congress hereinbefore set forth. Except in so far as said paragraph 8 of said bill of complaint is hereby admitted, said paragraph is denied.

9. This defendant admits so much of paragraph 9 of said bill of complaint as alleges that Groton Iron Works delivered to this defendant three of the remaining six of said wooden hulls and partially completed the other three hulls, and denies that said Groton Iron Works proceeded with the construction of said hulls in accordance with the terms of the said contracts, Exhibit 1 and Exhibit 2; and denies that the same were duly completed and delivered; and denies that said Groton Iron Works duly performed all the terms and conditions of said contracts on its part to be performed; and denies that this defendant prevented the performance of any of the terms and conditions thereof. This defendant further alleges that delivery of said three hulls was made to this defendant solely as representing and in behalf of the United States, and further alleges that under said contracts title to the said three hulls was at all times during the construction and thereafter in the United States.

138 10. This defendant admits the allegations of paragraph 10 of the bill of complaint, subject, however, and with reference to the correctness thereof, as determined by reference to Exhibits 1 and 2, attached to said bill of complaint. This defendant alleges that the said contracts, Exhibit 1 and Exhibit 2, made in the name of this defendant, were made by and in behalf of the United States, under the acts of Congress hereinbefore referred to.

11. This defendant admits the allegations contained in paragraph 11 of said bill of complaint that said Groton Iron Works did expend large sums of money by reason of increased cost of labor, material, and equipment, but this defendant denies that the said Groton Iron Works was compelled to make such expenditures by this defendant, and that this defendant imposed upon said Groton Iron Works any increased costs as aforesaid, and that this defendant was responsible by reason of alterations, additions, omissions, and substitutions in the plans for the construction of said vessels for any such increased cost as aforesaid.

12. This defendant denies the allegations contained in paragraph 12 of said bill of complaint.

13. This defendant admits the allegations contained in paragraph 13 of said bill of complaint. This defendant alleges that all payments, as alleged in said paragraph 13, were made by this defendant out of moneys of the United States and for and in behalf of the United States, under the acts of Congress hereinbefore referred to.

14. This defendant denies the allegations of paragraph 14 of said bill of complaint.

15. This defendant admits that a contract was entered into,
139 in its name, on or about the 11th day of August, 1917, substantially as set forth in paragraph 15 of said bill of complaint,

and as set forth in Exhibit 3 attached to said bill of complaint. This defendant alleges that the said contract entered into in its name was entered into by and in behalf of the United States under the acts of Congress hereinbefore referred to.

16. This defendant admits the allegations of paragraph 16 of said bill of complaint, but refers to the contract Exhibit 3 for the terms and conditions of said contract. This defendant alleges that the agreements set forth in said paragraph 16 were made in its name by and in behalf of the United States, under the acts of Congress hereinbefore referred to.

17. This defendant admits the allegations contained in paragraph 17 of said bill of complaint that Groton Iron Works commenced the construction and delivery to this defendant for and in behalf of the United States prior to March 26th, 1920, of said six steel vessels, and this defendant denies that said Groton Iron Works duly performed all of the terms of said contract on its part to be performed, and denies that this defendant prevented the due performance thereof, and denies that it waived the same.

18. This defendant admits the allegations of paragraph 18 of said bill of complaint, that Groton Iron Works expended large sums of money, but denies that said expenditures were by reason of or in compliance with the instructions and orders of this defendant, and denies that the requirements of this defendant resulted in a considerable excess of over eighty-eight hundred tons in the dead-weight tonnage of said vessels. This defendant denies that it failed and refused to pay Groton Iron Works or to make due allowance
140 and credit for such extra costs and expenditures and increases in tonnage as alleged in said paragraph 18.

19. This defendant admits the allegations contained in paragraph 19 of said bill of complaint. This defendant alleges that all payments as alleged in said paragraph 19 were made by this defendant out of moneys of the United States and for and in behalf of the United States under the acts of Congress hereinbefore referred to.

20. This defendant denies the allegations of paragraph 20 of said bill of complaint.

21. This defendant denies the allegations of paragraph 21 of said bill of complaint, except that it admits that on or about April 20th, 1918, a contract in writing was entered into between Groton Iron Works and this defendant, representing the United States, and acting solely as an agency of the United States, under the acts of Congress hereinbefore referred to, and that said contract is in the form of Exhibit 4 annexed to the bill of complaint.

22. This defendant admits the allegations of paragraph 22 of said bill of complaint, but refers to the contract Exhibit 4 for the terms

and conditions thereof; that the said agreements referred to in said paragraph 22 entered into in the name of this defendant were in behalf of the United States, under the acts of Congress hereinbefore referred to.

23. This defendant admits the allegations of paragraph 23 of said bill of complaint that Groton Iron Works constructed and delivered to this defendant all the vessels provided for in said contract Exhibit 4, excepting three vessels, the construction of which was ordered cancelled by the defendant, but this defendant alleges
141 that the delivery of said vessels to this defendant was to it as an agency or instrumentality of the United States and for and in behalf of the United States, and the title to said vessels was at all times during and after construction in the United States, and that the cancellation relative to the three vessels as set forth in said paragraph 23 was directed by this defendant as an agency of the United States, as expressly authorized by the terms and provisions of said act of June 15th, 1917, and said Executive order of the President of July 11th, 1917. Except as herein admitted, this defendant denies the allegations of said paragraph 23 and specifically denies that said Groton Iron Works duly performed all of the obligations of said contract on its part to be performed, and denies that this defendant prevented the performance thereof in whole or in part by any acts, defaults, and refusals upon its part, and denies that it waived performance thereof.

24. This defendant denies the allegations of paragraph 24 of the said bill of complaint.

25. This defendant admits the allegations of paragraph 25 of said bill of complaint that Groton Iron Works expended large sums of money, but denies that said expenditures were by reason of or in compliance with the instructions and orders of this defendant, and denies that the requirements of this defendant resulted in a considerable excess of over ninety-four hundred tons in the dead-weight tonnage of said vessels. This defendant denies that it failed and refused to pay Groton Iron Works or to make due allowance and credit for such extra costs and expenditures and increases in tonnage as alleged in said paragraph 25.

26. This defendant admits the allegations contained in
142 paragraph 26 of said bill of complaint. This defendant alleges that all payments as alleged in said paragraph 26 were made by this defendant out of moneys of the United States and for and in behalf of the United States under the acts of Congress hereinbefore referred to.

27. This defendant denies the allegations of paragraph 27 of said bill of complaint.

28. This defendant denies the allegations of paragraph 28 of said bill of complaint.

29. This defendant denies the allegations of paragraph 29 of said bill of complaint.

30. This defendant denies the allegations of paragraph 30 of said bill of complaint.

31. This defendant denies the allegations of paragraph 31 of said bill of complaint.

32. This defendant denies the allegations of paragraph 32 of said bill of complaint.

33. This defendant denies the allegations of paragraph 33 of said bill of complaint.

34. This defendant admits the allegations of paragraph 34 of said bill of complaint that the defendant knew that it would be necessary for Groton Iron Works to construct a new shipbuilding plant. Except in so far as is hereby admitted, this defendant denies the allegations of said paragraph 34. This defendant alleges that before making said contract, Exhibit 3, the United States assumed, on or about the third day of August, 1917, and was continuously in control of the shipbuilding industry of the United States.

35. This defendant denies the allegations of paragraph 35 of said bill of complaint.

36. This defendant denies the allegations of paragraph 36 of said bill of complaint.

37. This defendant denies the allegations of paragraph 37 of said bill of complaint.

143 38. This defendant denies the allegations of paragraph 38 of said bill of complaint.

39. This defendant admits the allegations contained in paragraph 39 of said bill of complaint that temporary receivers of Groton Iron Works were appointed on or about March 20th, 1919, by the Superior Court of Connecticut, and assumed possession of the plant and property of Groton Iron Works, and that thereafter, as alleged, permanent receivers were appointed, and that the then district manager of this defendant was appointed one of the permanent receivers. Except in so far as hereby admitted, this defendant denies the allegations of paragraph 39 of said bill.

40. This defendant admits the allegation contained in paragraph 40 of said bill of complaint that the said receivership was terminated on or about April 3rd, 1920, and that the plant and property of the Groton Iron Works was returned to its possession. Except in so far as hereby admitted, this defendant denies the allegations of paragraph 40 of said bill of complaint.

41. This defendant admits the allegation contained in paragrap 41 of said bill of complaint that said Groton Iron Works did bu certain real estate in Groton, Connecticut, and constructed there dwelling houses. Except in so far as hereby admitted, this defend ant denies the allegations of paragraph 41 of said bill of complain

42. This defendant denies the allegations of paragraph 42 of sa bill of complaint, except that this defendant admits that Groton Iro Works on or about the first day of December, 1921, filed a petitio in bankruptcy in the District Court of the United States for th District of Connecticut.

43. This defendant denies the allegations of paragraph 43 of sa bill of complaint.

144 44. This defendant denies the allegations of paragraph of said bill of complaint.

45. This defendant admits the allegations contained in paragra 45 of said bill of complaint.

46. This defendant denies the allegations of paragraph 46 of sa bill of complaint.

47. This defendant denies the allegations of paragraph 47 of sa bill of complainant, except that it admits that a written instrume under date March 26th, 1920, a copy of which is annexed to t bill and marked "Exhibit 5," was executed between Groton Ir Works and the United States, represented by this defendant, on about March 30th, 1920.

48. This defendant denies that it has any knowledge or inform tion sufficient to form a belief respecting the allegations contain in paragraph 48 of said bill of complaint, except that it admits th Groton Iron Works signed the agreement, a copy of which is annex to the bill of complaint and marked "Exhibit 5," on or about Ma 26th, 1920, and that this defendant in behalf of the United Sta acting as agent for the United States under the acts of Congr hereinbefore referred to, signed said agreement on or about Ma 30th, 1920.

49. This defendant denies the allegations contained in paragr 49 of said bill of complaint.

50. This defendant denies the allegations contained in paragr 50 of said bill of complaint, except that it has no knowledge as what was known to Groton Iron Works or its officers, as ther alleged, and therefor denies the same.

51. This defendant denies the allegations contained in paragr 51 of said bill of complaint.

52. This defendant denies the allegation contained in paragr 52 of said bill of complaint.

145 53. This defendant denies the allegations contained in p graph 53 of said bill of complaint, except that on or a

April 26th, 1920, application was made to the Superior Court of Connecticut for the reinstatement of the receivers of Groton Iron Works, and this defendant admits that subsequent to March 26th, 1920, this defendant did not deliver to Groton Iron Works a Ferris type wooden ship and a Ferris type hull and a bill of material, but this defendant alleges that Groton Iron Works waived the requirement of delivery of either said wooden ship, said hull, or said bill of material.

54. This defendant denies the allegations contained in paragraph 54 of said bill of complaint.

55. This defendant denies the allegations contained in paragraph 55 of said bill of complaint.

FIRST SEPARATE DEFENSE

For a separate and complete defense to the several claims and causes of action set forth in the bill of complaint, as accrued prior to March 26th, 1920, this defendant alleges:

56. Paragraphs 44 to 55, inclusive, of this answer are hereby by reference made a part of this separate and complete defense, as fully as though written out at length herein.

57. That by virtue of the terms and provisions of the contract dated March 26th, 1920, attached to the bill of complaint herein as Exhibit 5, the Groton Iron Works, for a valuable consideration, released to the United States, United States Shipping Board, and the United States Shipping Board Emergency Fleet Corporation all claims and causes of action accruing prior to said March
146 26th, 1920, and this defendant further alleges that the said contract in various respects was an executory contract and that the said Groton Iron Works accepted the benefits thereof and accepted performance thereof on the part of the said Emergency Fleet Corporation, and said contract became operative and continued in full force and effect. This defendant further alleges that under said contract said Groton Iron Works specifically accepted the agreements and covenants to be performed by this defendant in full settlement as just compensation and in accord and satisfaction of any and all claims, demands, causes of action, suits, expenses, and other charges and of all obligations of the Emergency Fleet Corporation and/or the United States of America, of every kind or character under and by virtue of the contracts stated in the bill of complaint herein, described in said complaint as Exhibits 1, 2, 3, and 4, arising or accruing up to the date of said contract, March 26th, 1920.

For a second separate and complete defense to each and all of the causes of action and claims set forth in the bill of complaint, this defendant alleges:

58. That under and pursuant to the emergency shipping fund provisions of the act of Congress of June 15th, 1917, the President of the United States, by Executive order of July 11th, 1917, delegated to this defendant all the powers vested in him by said act with reference to the construction of vessels and the acquisition of materials suitable for the construction of vessels, and other powers as more fully set forth in said Executive order, reference to which is hereby made for greater particularity.

59. That under the terms and provisions of said act of Con-
147 gress of June 15th, 1917, the President was authorized to enter into a contract for the building of ships, supplies, and materials to the extent only of the necessities of the Government, to be determined by the President during the war; that in and by said act of Congress the power of cancellation of all contracts so entered into was expressly reserved to the United States; that this power of cancellation was by the President of the United States by said Executive order of December 3rd, 1918, delegated to this defendant and to the United States Shipping Board, with power to the latter further to delegate the same to this defendant, and such power was so delegated by the Shipping Board to this defendant; that in the exercise of such power of cancellation and with the further power of modification and suspension similarly granted by said act of Congress to the President and by him similarly delegated to this defendant in behalf of the United States and as the duly authorized branch of the United States Government, shortly after the termination of hostilities by the armistice on November 11th, 1918, modified and suspended part of the shipbuilding contracts herein referred to and cancelled part thereof; that under the terms of said act of June 15th, 1917, the Groton Iron Works immediately upon such modification, suspension, or cancellation, as the case might be, having been ordered by the United States through this defendant, had the right to receive just compensation for any and all damages claimed to have been suffered thereby, and such compensation was, under the terms of said act, to be determined by the President; that under the merchant marine act of 1920, sec. 4, the United States Shipping Board
was vested with the power to make an award of just compen-
148 sation for all such alleged damages as had by the prior act

been granted to the President, and in and by each of said acts it was further provided that any person entitled to the award of just compensation should, if dissatisfied with the award, be entitled to receive seventy-five per centum thereof, and to sue the United States in the Court of Claims under sec. 145 of the Judicial Code for an amount, which, added to such seventy-five per centum, would constitute just compensation; that the said remedy so afforded by said act of Congress has been at all times open to the Groton Iron Works and to the complainant herein, its trustee in bankruptcy; that said remedy is exclusive of all other remedies in all courts of the United States and that this court has no jurisdiction to grant the complainant the relief sought for in its bill of complaint.

For a third and partial defense to each and all of the causes of action and claims set forth in the bill of complaint, this defendant alleges:

60. That to so much of the causes of action or claims set forth in the bill of complaint as arise from modification, suspension, or cancellation of any of the shipbuilding contracts, or other contracts set forth in the bill, this defendant repeats and realleges with like force and effect as if restated at length in this separate defense, each and all of the allegations set forth in the second separate defense.

FOURTH SEPARATE DEFENSE

For a fourth and complete defense to each and all of the causes of action and claims, set forth in the bill of complaint, this defendant alleges:

61. That with respect to each and all of the transactions set
149 forth in the bill of complaint, with respect to which relief is prayed against this defendant this defendant was acting solely as an agency of the United States, selected by the President under the powers conferred upon him by the emergency shipping fund provisions of the act of June 15th, 1917, hereinbefore referred to; that the United States is the real party in interest; and that this defendant did not assume and is under no personal libility to the complainant with respect to the acts and transactions set forth in the bill, and the complainant's sole remedy, if any, is by suit against the United States in the manner provided by law.

As a set-off and counterclaim against the complainant, this defendant further alleges as follows

62. That if it be held by the court that complainant is entitled to an accounting with respect to any of the matters and transactions set forth in the bill, this defendant alleges that upon a statement of account between the parties the Groton Iron Works is indebted to this defendant over and above all credits to which it may be held to be entitled, in the sum of not less than five millions of dollars.

Wherefore this defendant prays that the bill of complaint herein be dismissed with costs, or, in the alternative, that a decree be entered for this defendant to recover such sum as may be found to be due to this defendant, with interest and costs.

Dated, July 20th, 1923.

ALLAN K. SMITH,
United States Attorney,
Solicitor for the Defendant.

CHAUNCEY G. PARKER,
HENRY M. WARD,
HENRY F. PARMELEE,
Of Counsel.

150 In United States District Court

Reply

P. Leroy Harwood, trustee in bankruptcy of Groton Iron Works, complainant herein, for his reply to the answer and counterclaim of the defendant United States Shipping Board Emergency Fleet Corporation,

1. Denies the allegations of paragraph 62 of the answer herein and alleges in reference thereto that defendant is indebted to complainant by reason of the matters alleged in the bill of complaint in the sum alleged in said bill of complaint.

Wherefore complainant prays that said set-off and counterclaim may be dismissed and that a decree may be entered herein in favor of complainant for the relief prayed for in the bill of complaint.

WALLER, WALLER, AVERY & GALLUP,
HERBERT B. LEE,
Solicitors for Complainant.

WILLIAM H. GRIFFIN,
H. STARR GIDDINGS,
ROBERT P. STOUT,
Of Counsel.

Verified by complainant July 20, 1923.

131 In United States District Court

Memorandum of decision referring issues to special master

The plaintiff has filed two motions—one returnable June 12th and the other on June 30th.

The relief asked for on the first motion is for an order directing that David E. FitzGerald be appointed special master to take and report the testimony, to audit and state the accounts involved herein, to determine what questions are actually at issue, to hear conflicting testimony and make findings thereon, and report the same to the court; also that the order direct that any testimony taken before the special master in the suit in this court entitled "United States of America, Plaintiff vs. Groton Iron Works et als., defendants," known as the foreclosure action, may be read and used before the special master herein and before this court upon any final hearing, wherever the same is relevant, with the same force and effect as though taken in this action, and that as far as possible hearings before the special master in both this suit and the foreclosure action proceed simultaneously.

From my familiarity with the issues involved in this and the foreclosure action it is apparent that the accounts are complex and intricate; the documents and other evidence I believe will be voluminous and extensive computation will doubtless be necessary. It seems to me that the "exceptional conditions" referred to in Equity Rule 59 are present in this, as well as in the foreclosure case. Moreover, as indicated by Mr. Justice Brandeis in Ex Parte Peterson, 253 U. S. 300, it is proper for me to refer the taking of the

132 testimony and the auditing the accounts to a special master rather than for the court to undertake to perform that task.

The second motion returnable June 30th requests the severance of certain special issues raised by the pleadings, and further requests that said special issues, if separated, should be referred to a special master to take and report the testimony upon such special issues and to hear conflicting testimony in respect of the same and make findings thereon. There are four issues raised by defendant's answer set forth in four separate defenses. The first separate defense sets up an accord and satisfaction based upon a certain agreement dated March 26, 1920. The fourth separate defense sets forth that defendant herein acted at all times as agent for the United States and that the United States is the principal and the proper party against whom claim should be made. A decision adverse to plaintiff upon either of these issues may obviate the taking of testimony upon some of the main issues herein. I therefore conclude that the issues raised by the first and fourth defenses set forth in defendant's an-

swer herein be severed, and that the testimony upon these two issues be taken separately and in advance of the taking of any testimony upon the main issues herein. For reasons above stated, it seems to me proper that the court relieve itself of the taking of the testimony upon these two issues and that the taking of testimony and the auditing of the accounts be referred to a special master to report them.

I have already appointed David E. FitzGerald special master in the foreclosure action, and as the issues in both of these actions are in many instances identical, and as the same testimony in many
153 instances offered in the foreclosure action will be necessary in this action, I deem it advisable that Mr. FitzGerald be appointed special master in all these matters and that the testimony taken before him in the foreclosure action may be used in this action, and that, as far as possible, the taking of testimony in the two actions should proceed simultaneously. It follows, therefore, that plaintiff's motions returnable June 12th and June 30th, respectively, are granted.

JULY 12, 1924.

EDWIN S. THOMAS, *U. S. D. J.*

In United States District Court

Order appointing special master

P. LeRoy Harwood, as trustee in bankruptcy of Groton Iron Works, the complainant in the above-entitled action having moved this court on the 12th day of June, 1924, for an order appointing a special master herein, and for other relief, and said motion having duly come on to be heard, now, upon reading and filing the petition of P. LeRoy Harwood, verified the 7th day of June, 1924, and upon said petition, and upon all the papers, pleadings, and proceedings heretofore had herein, and upon the pleadings now on file with the clerk of this court in an action entitled "United States of America, Plaintiff, Against Groton Iron Works and Others, Defendants," known and designated as "In Equity No. 1634," and after hearing counsel for said complainant in support of said petition, and counsel for the defendant in opposition thereto, and due consideration having been had thereon, it is

154 Ordered that the Honorable David E. FitzGerald, of New Haven, be and he hereby is appointed special master herein to take and report the testimony, to audit and state the accounts involved herein, to determine what questions are actually in issue, to hear conflicting evidence and make findings thereon, and report the same to the court for its advisement.

Further ordered and directed that all testimony and evidence taken before said Special Master David E. FitzGerald, in the action en

titled "United States of America, Plaintiff, Against Groton Iron Works and Others, Defendants," in Equity No. 1634, in this court, may be used and read before said special master herein, and before this court upon any final hearing herein, wherever the same is relevant, with the same force and effect as though such testimony and evidence had been taken before said Special Master David E. FitzGerald in this action; and it is

Further ordered and directed that, as far as possible, hearings before said special master in both this action and said action in Equity No. 1634 shall proceed simultaneously.

NORWALK, *July 12, 1924.*

EDWIN S. THOMAS, *U. S. D. J.*

155 In United States District Court

Order severing first and fourth defenses

P. LeRoy Harwood, as trustee in bankruptcy of Groton Iron Works, the complainant in the above-entitled action, having moved this court on the 12th day of June, 1924, for an order appointing a special master herein to take and report the testimony, to audit and state the accounts involved herein, to determine that questions are actually in issue, to hear conflicting evidence and make findings thereon, and report on the same to this court for its advisement, and for other relief, and an order upon said motion having been made herein under date of July 12th, 1924; and said P. LeRoy Harwood having also moved this court, on notice of motion dated June 23rd, 1924, for an order severing special issues raised by the pleadings in this actions, and praying that any such special issues should be heard and determined separately from and in advance of the hearing of the main issues in this action under the above-mentioned order of June 30th, 1924;

Now, upon reading and filing the said notice of motion dated June 23rd, 1924, and upon all the pleadings and proceedings heretofore had herein, and after hearing Thomas G. Flaherty and William H. Griffin, Esqs., counsel for said complainant, in support of said motion, and Henry M. Ward and Henry F. Parmelee, Esqs., counsel for defendant, United States Shipping Board Emergency Fleet Corporation, in opposition thereto, and due deliberation having been had thereon, it is

156 Ordered and directed that the issues herein raised by the first and fourth separate defenses interposed in the answer to the cause of action set forth in the bill of complaint herein be severed; and it is further

Ordered and directed that Honorable David E. FitzGerald, of New Haven, Connecticut, the special master heretofore appointed in the

said order herein dated July 12th, 1924, separately taken and report the testimony in respect to each of the special issues hereby directed to be severed, determine what questions are actually at issue in respect of said special issues so severed, and hear conflicting evidence and make findings thereon and report the same to this court for its advisement in advance of the hearing of the main issues in this action; and it is further

Ordered and directed that all testimony and evidence taken before said Speical Master David E. FitzGerald, in the action entitled "United States of America, Plaintiff, Against Groton Iron Works and Other, Defendants," in Equity No. 1634, in this court, may be used and read before said special master herein upon the hearing on said special issues, so severed, wherever the same is relevant, with the same force and effect as though such testimony and evidence had been taken before said special master in this action.

Dated, July 12, 1924.

EDWIN S. THOMAS, *U. S. D. J.*

157 In United States District Court

Petition of Isaac Siegel and one as receivers to intervene

The petition of Isaac Siegel and John M. J. Thatcher respectfully shows:

First. By an order duly made and entered on the 4th day of May, 1925, in a cause then and now pending in the United States District Court for the Southern District of New York between the Prest-O-Lite Company, Inc., complainant, and United States Steamship Company as defendant, the petitioners were duly appointed ancillary receivers of said United States Steamship Company and thereupon duly qualified and have since been and now are acting as such ancillary receivers.

Second. As appears from the bill of complaint in said cause now pending in the United States District Court for the Southern District of New York, the said United States Steamship Company owns all the outstanding capital stock of the defendant Groton Iron Works, and also the capital stock of the Virgin'a Shipbuilding Corporation, which, as the petitioners are advised, is connected directly or indirectly with the issues involved in this suit; and the petitioners are of the opinion that for the full protection of the rights of the said United States Steamship Company and of its subsidiary corporations, the said Virginia Shipbuilding Corporation, and Groton Iron Works, it is necessary and advisable that the petitioners as ancillary receivers as aforesaid be made parties to the above-entitled cause now pending in this court in and for the District of Connecticut.

158 Third. On the 28th day of May, 1925, an order was duly made and entered in said cause now pending in the United States District Court for the Southern District of New York authorizing and directing the petitioners as ancillary receivers as aforesaid to take such action as may be necessary and proper in order that they may be made parties in the above-entitled cause. A certified copy of said order is hereto annexed marked "Exhibit A" and hereby made a part hereof.

Wherefore petitioners pray that an order may be entered herein directing that the petitioners as ancillary receivers as aforesaid be made parties to the above-entitled cause, and that the petitioners have such other and further relief as to the court may seem just.

And the petitioners will ever pray, etc.

Dated, August 26th, 1925.

ISAAC SIEGEL,
JOHN M. P. THATCHER,
Petitioners.

(Verified by petitioners August 26, 1925.)

159 United States District Court, Southern District of New York

Exhibit A, attached to petition

THE PREST-O-LITE COMPANY, INC., COMPLAINANT

AGAINST

UNITED STATES STEAMSHIP COMPANY, DEFENDANT

This cause came on further to be heard at this term, and on the annexed petition of Isaac Siegel and John M. P. Thatcher, verified on the 27th day of May, 1925, and on motion of Edwards, Murphy & Minton, solicitors for the petitioners as ancillary receivers of the defendant herein, it was ordered

1. ——

2. That Isaac Siegel and John M. P. Thatcher as ancillary receivers of the United States Steamship Company be and hereby are authorized and directed to take such action as may be necessary and proper in order that they may be made parties defendant in a suit now pending in the United States District Court for the District of Connecticut between P. Leroy Harwood as trustee in bankruptcy of Groton Iron Works, complainant, and United States Shipping Board Emergency Fleet Corporation as defendant.

Dated, New York, May 28, 1925.

HENRY W. GODDARD, *U. S. D. J.*

160 In United States District Court

Order allowing intervention

This cause coming on to be heard on the application of Isaac Sie and John M. P. Thatcher, ancillary receivers of the United Sta Steamship Company, to be made parties in the above-entitled cau and the petition having been duly considered, the court finds that tice of the application was duly given to all parties in the case a that the facts stated in said petition are true, and it appearing to court that the petitioner ought to be allowed to intervene in suit and counsel for the defendant opposing, it is therefore

Ordered, adjudged, and decreed that Isaac Siegel and John M. Thatcher, as ancillary receivers of the United States Steamship Co pany, have leave to intervene in said suit, and to that end may app and file a pleading in said suit within 20 days from the date of t order in the same manner and with like effect as if named in original bill as party defendants, said intervention to be with prejudice to any proceeding heretofore had herein and not to exercised for purposes of delay.

Dated, September 14th, 1925.

HENRY W. GODDARD,
United States District Judge

161 In United States District Court

Answer of intervenors-defendants

The defendants, Isaac Siegel and John M. P. Thatcher, as cillary receivers of the United States Steamship Company, for th answer to the bill of complaint herein allege as follows:

First. Upon information and belief said defendants admit e and every allegation contained in the bill of complaint herein pray for the relief therein prayed for.

EDWARDS, MURPHY & MINTON,
Solicitors for Defendants,
Isaac Siegel and John M. P. Thatche

Office and P. O. Address, No. 26 Liberty Street, Borough of M hattan, City of New York.

Verified by defendants' receivers Sept. 30, 1925.

In United States District Court

Master's report

This action by P. LeRoy Harwood as trustee in bankruptcy the Groton Iron Works against the United States Shipping Bo

Emergency Fleet Corporation first came to the law side of this court and thereafter, on the 20th day of July, 1923, was duly transferred to the equity side, and the complainant permitted to file the bill of complaint now before the court for consideration.

The bill of complaint asks for an accounting of money claimed to be due Groton Works for constructing wooden and steel vessels under contracts alleged to be with the Fleet Corporation and for damages arising out of the breaches and cancellation thereunder by said defendant.

162 Copies of the contracts referred to are attached to the bill of complaint and marked "Exhibits 1 to 5," inclusive.

The complainant further asks that the contract dated March 26, 1920, be declared "null, void, inoperative, and of no force and effect and that it be set aside or if not so adjudged wholly void, etc., that the provisions thereof providing for an accord and satisfaction be declared null, void, etc." This contract is also attached to the bill of complaint and marked "Exhibit 5."

To the bill of complaint and the prayer for relief thereof, the defendant filed an answer containing certain denials and admissions, also setting up several separate and complete defenses, together with a set-off and counterclaim.

The first separate and complete defense alleges in substance that the claims and cause of action set forth in this bill of complaint, existing on and prior to March 26, 1920, were by reason of the contract dated March 26, 1920, and referred to as "Exhibit 5" in the bill of complaint released. That this contract, Exhibit 5, was accepted in full settlement as just compensation for and in accord and satisfaction of any and all claims, etc., existing under the contracts described in the bill of complaint as Exhibits 1, 2, 3, and 4 and up to March 26, 1920.

The fourth separate and complete defense is in substance that the defendant was acting solely as an agency of the United States, selected by the President under the emergency fund provisions of the act of June 15, 1917, and that the United States is the real party in interest. And, further, that the defendant did not assume any personal liability in connection with the subject matter of the

163 contracts referred to, and hence the complainant's sole remedy is by proceeding against the United States in the manner provided by law in such cases and not otherwise.

After this cause of action had duly come to be heard upon the pleadings and proceedings thereon and upon the pleadings on file with the clerk of this court, upon motion duly made and consideration having been had thereon, the court, as more fully appears by the order on file, ordered that the undersigned be appointed the special master to take and report the testimony in said action.

Thereafter and on the 9th day of July, 1924, upon motion made and due deliberation having been had thereon, the ordered and directed that the issues herein raised by the first fourth separate defenses interposed in the answer to the cau action set forth in the bill of complaint herein be severed; further,

"Ordered and directed that the special master heretofore pointed * * * separately take and report the testimony i spect to each of the special issues directed to be severed, deter what questions are actually at issue in respect of said special i so severed, and hear conflicting evidence and make findings th and report the same to this court for its advisement in advan the main issue in this action;" and * * * further;

"Ordered and directed that all testimony and evidence take fore the special master in the action entitled 'United State America, plaintiff, Against Groton Iron Works and Other De ants,' in Equity No. 1634 in this court, may be used and rea fore said special master herein upon this hearing on

164 special issues so severed, whenever the same is relevant, the same force and effect as though such testimony and dence had been taken before the special master in this action."

PROCEDURE

In compliance with said orders of the court, which will fully appear by the original records in the case, I proceeded cordance with the law in such matters to perform the assigned to me as special master, and caused due notice to be to the parties hereto of the time and place of the first meeting thereafter from time to time similar notices, according to law, given of subsequent meetings and the parties appeared by c and on the 20th of August, 1924, read into the record the follo

"It is stipulated and agreed on the record between couns the parties appearing that copies of documents unauthenticate be offered and received as evidence, subject to comparison an rection if desired by either party.

"It is further stipulated that testimony taken in this cas be used, subject to objection as to relevancy, in Equity No 163 vice versa, etc. etc."

Thereafter, from time to time, hearings were held until proofs were completed, the evidence concluded, and final argu made of which a transcript was submitted to me on January 1926.

Some delay in the proceedings was occasioned for several m because of a protracted illness of the special master.

165 The burden of proof being upon the defendant to sustain the allegations of the special defenses interposed in the answer, counsel proceeded with the offer of evidence relative to the issues raised by the first and fourth special defenses, which had been ordered severed by the court.

A transcript of all the evidence offered by either party and particularly referred to, exhibits introduced and marked as appears from said transcript, comprising the proof upon which the parties predicate their respective claims as to the questions actually at issue in respect of said special issues so severed, are herewith submitted as part of this report.

As the complaint, answer, and exhibits attached to the same, together with the evidence and proofs offered and herewith submitted, describe with great particularity the relationship existing under the various contracts between Groton and the Fleet Corporaion, I have deemed it unnecessary for the purpose of this report to quote from or repeat them, other than I have heretofore done, nor to quote at length from the evidence or proofs submitted.

This report, therefore, will be confined to a recital of the substance of the claims of the parties, a determination of the questions actually at issue in respect of said special issues so severed, with a finding on all the issues under the first and fourth separate defenses, together with reasons therefor.

Hereafter the terms "Groton" and "Fleet Corporation" will be used when referring to Groton Iron Works and the United States Shipping Board Emergency Fleet Corporation, respectively.

166 CLAIMS OF THE PARTIES

I

Groton upon the proofs submitted claims:

That there was no consideration for the March 26, 1920, contract (Exhibit 5).

That said contract was executed under mutual mistake of fact.

That there was an abandonment of it and a substitution of other agreements.

That there was a nonperformance of its terms.

That there was misrepresentation, fraud, duress, etc., on the part of the Fleet Corporation et al. in obtaining its execution.

That a complete accounting is essential to passing upon the defenses in question.

That the Fleet Corporation was organized as a corporation in accordance with law and as such execute dthe various contracts re-

ferred to in the complaint and annexed thereto and made p
thereof.

That at all times mentioned in the pleadings the Fleet Corpo
tion acted in its corporate capacity, and all moneys paid by it,
matter from what source received, were disbursed by officials
agents acting for it in its corporate capacity, and it has thus fu
tioned since its organization by the Shipping Board under the
thority conferred by the "shipping act, 1916," so-called.

II

The defendant in substance urges among other claims that
proofs warrant a finding that there is sufficient legal con
167 eration for the March 26, 1920, contract (Exhibit 5) in t
said contract is under seal.

That said contract (Exhibit 5) is binding upon the par
thereto, and by it Groton released and discharged the Fleet Corpo
tion from all claims, etc.

That it provides for a year's extension of time for the paym
of the two mortgages of $1,000,000 and $800,000, respectively, wh
were about to become due.

That $250,000 was advanced so that Groton's creditors would
ceive some money and the receivership referred to lifted and
control and possession of the shipyards returned to Groton.

That other payments of money were made to Groton up and s
sequent to April 19, 1920, the date it received notice (Exhibit
that nothing more was due under the contract.

That there was no fraud, duress, or misrepresentation used or
sorted to by those representing the Fleet Corporation.

That the ship "Columbine" was designated as an acceptable s
by Groton and tendered to it by the Fleet Corporation but refu
unless repairs were made.

That thereafter Groton waived its right to the same, also to
bill of material, etc., to which it was entitled under the March
1920, contract (Exhibit 5).

That the Fleet Corporation, although the record owner of
two (2) mortgages for $1,000,000 and $800,000, respectively, g
by Groton and hereinbefore referred to, assigned the same to
United States of America, and said mortgages and assignment h
been duly recorded.

That the Fleet Corporation in all matters set forth in
168 bill of complaint was acting solely as an agency of the Un
States, and it alone, and not the Fleet Corporation, is li

FINDINGS

Having duly considered all the conflicting proofs and the evidence offered as more fully appears by the record thereof, herewith reported and submitted, together with the claims of the parties thereon, in respect to each of the said issues directed to be severed, I have determined the questions actually at issue in respect of said special issues so severed and find as follows, with reasons therefor:

I have determined and so find that the claims of the parties respectively as above set forth and predicated upon the proofs offered and the pleadings on file constitute in substance the questions which are actually at issue in respect of said special issues so severed by order of the court.

I further find:

That the Fleet Corporation was duly and legally organized under the corporation laws of the District of Columbia in accordance with the power vested in the United States Shipping Board by section 11 of the "shipping act 1916" so-called (39 Statutes at Large 731). And during the period of time referred to in the bill of complaint and thereafter was acting in its corporate capacity and did all things necessary to have completed, as rapidly as possible, the construction of the vessels referred to in the various contracts entered into with "Groton."

That prior to June 15, 1917, the date of execution of contract known as "contract No. 15 WH," referred to as Exhibit 1 in
169 the bill of complaint, and also as Exhibit E in the record, and thereafter Groton held itself out to be ready and able not only to carry out the terms of that contract which provided for the construction of the 12 wood vessels referred to therein, but also to carry out the terms of the other contracts known as "contract 57 S C" and "contract 225 S C," respectively, and referred to in the bill of complaint as Exhibits 3 and 4, for the construction of the steel vessels referred to therein.

That the terms, conditions, and specifications of the various contracts referred to in the bill of complaint were particularly and specifically based upon the knowledge and experience of those respectively in charge of the affairs of Groton and the Fleet Corporation. That the said several contracts referred to and all circumstances attending the carrying out of the same or any amendment or supplement thereto were what might be expected to arise under the "then existing war conditions."

That the Fleet Corporation increased the price originally agreed upon for the building of the wood hulls under contract known as

"contract No. 15 W H" and referred to in the bill of complaint as Exhibit 1 (also referred to as Exhibit E in the record) by means of a supplemental contract entered into between the parties and described in the bill of complaint as Exhibit 2.

That the supplemental contract (Exhibit 2) also provides for certain adjustments between the parties, and although various claims and demands were made by Groton and adjusted at the time this supplemental contract was executed, thereafter misunderstandings continually arose between those in charge of Groton and the
170 representations of the Fleet Corporation relative to the carrying out of the terms of the several contracts referred to in the bill of complaint and the financing of the same.

That subsequent to the execution of contracts known as "contract No. 57 S C" and "contract No. 225 S C" (Exhibits 3 and 4 referred to in the bill of complaint) Groton found itself financially unable to go on with the construction of the vessels specified in said contracts, and altho loans were made to it by the Fleet Corporation its financial condition became such in March, 1919, that receivers were appointed by the Superior Court of New London County, in the State of Connecticut, to take charge of its affairs.

That Groton claims this receivership was the result of it not having received adequate payments and advances from the defendant as provided for in the contracts referred to; also because of the latter's failure to settle for extras due Groton for changes made by the Fleet Corporation representatives in the plans and specifications connected with the contracts in question.

That while the receivership was pending those interested in Groton endeavored to have the same lifted. And to that end a number of conferences were held between the representatives of both parties in an endeavor to reach a common ground and understanding for an adjustment of the differences existing which would be satisfactory to all concerned. However, little success attended these efforts and although on the 20th day of December, 1919, an agreement (complainant's Exhibit 25) between the United States Steamship Company, the owner of a majority of the stock of Groton, and the Fleet Corporation was entered into for the purpose of adjusting said difference the parties never went forward to carry out
171 its terms, because Groton was unable to provide the funds necessary to lift the receivership. (See paragraphs 23 and 24, complainant's Exhibit 29.)

That during the receivership the receivers continued to operate the plant and to carry on the construction work on the vessels referred to in said contracts, but at a claimed increased cost to Groton.

That Groton claims its officers did not have access to its books and records and did not know and had no means of ascertaining the exact condition of accounts and there never was an accounting between the receivers and the Fleet Corporation. That in consequence of these and other conditions over which it had no control and no relief Groton claims it finally agreed to the terms of the March 26, 1920, contract (Exhibit 5).

That at various times preceding the execution of the March 26, 1920, contract (Exhibit 5) by Groton the latter endeavored to ascertain from the Fleet Corporation and the Shipping Board representatives their positions, respectively, with reference to the lifting of the receivership and the return of the control of the ship yard or yards to Groton, as well as the adjusting of certain claims alleged to exist in favor of Groton because of cancellations and for extras, etc. Also the matter of additional advancements of money to enable Groton to go forward with the construction of the remaining unfinished vessels was discussed and considered.

That for some time prior to March 26, 1920, the books of Groton were in the possession of the receivers. The representatives of the Fleet Corporation had access to them, also Groton's repre-
172 sentatives had permission to examine these books but did not do so at any time during which the terms and conditions of Exhibit 5 (contract of March 26, 1920) was under discussion, and no legal excuse has been offered because of the failure to do so.

That the Messrs. Morse credited with controlling Groton, the United States Steamship Company, the Virginia Shipbuilding Corporation, and other shipyards; the attorneys representing these corporations as well as these persons individually; the members of or at least some of the members of the United States Shipping Board; the representatives and attorneys of the Fleet Corporation and of the receivers and others who attended the various conferences held with reference to lifting the receivership, each and all discussed the details of the March 26, 1920, contract (Exhibit 5) prior to and shortly after its execution by the parties thereto. That at one of the conferences held at Washington on March 30, 1920, Mr. Charles Morse declared in substance that with the financial aid which the Fleet Corporation was to furnish under the contract Exhibit 5, Groton would be able to take care of the rest of the finances necessary for the completion of the vessels referred to.

(See Record, pg. 124.)

That neither at the conferences held prior to March 26, 1920, nor at any other time was fraud, misrepresentation, deceit, or duress practiced or resorted to by either of the parties or their representa-

tives to obtain or cause to be obtained the execution of the March 26, 1920, contract (Exhibit 5).

That following the execution of the March 26, 1920, contract
173 (Exhibit 5) and in compliance with the term thereof, the Fleet Corporation caused the sum of $250,000 to be advanced to the receivers to pay to Groton's creditors.

That thereafter the receivership was lifted and Groton went back into possession of the shipyards in question and proceeded to complete the vessels remaining unfinished under the contracts referred to.

That under the contract of March 26, 1920 (Exhibit 5), the Fleet Corporation agreed to pay Groton a much larger price for each vessel than that provided for originally in the various contracts. Also to advance money to Groton until the total amount, including all prior sums advanced under contracts known as "contract 57 S C" and "contract 225 S C" (Exhibits 3 and 4) totaled $16,655,646. And this amount of $16,655,646, exclusive of amounts advanced and secured by mortgages (and subject to certain modifications provided for in Article IV, paragraph 2, of Exhibit 5), was set as the maximum cost price of the vessels referred to in said contracts Exhibits 3 and 4.

That the sum of $500,000 was also agreed upon in the contract of March 26, 1920 (Exhibit 5), as an adjustment and settlement growing out of the cancellation of certain of the steel vessels referred to in said "contract No. 225" (Exhibit 4 in bill of complaint), not to be paid, however, to Groton in cash, but to be applied after the delivery of the last vessel in reduction of the principal sum advanced to Groton and secured by two mortgages given to the Fleet Corporation on real estate owned by it for $1,000,000 and $800,000, respectively, and referred to in the record.

174 That on or about April 19, 1920, the Fleet Corporation notified Groton that the total amount of moneys advanced and debited to it under the agreement of March 26, 1920 (Exhibit 5), and the other contracts supplemental to it, was in excess of $16,155,648, after allowance, etc., were provided for in said contracts. And that moneys needed to complete the three vessels under construction must be provided by Groton in accordance with paragraph 4, Art. V, of said agreement (Exhibit 5).

(See complainant's Exhibit 14, Record, pg. 80.)

That this notification (Exhibit 14) Groton claims was the first information or knowledge it had as to the extent of its financial obligation to the Fleet Corporation.

That at this time Groton, not having the money necessary to enable it to complete the three unfinished vessels, and in order that it might go forward with the construction thereon, applied to the

Fleet Corporation for the use of part of the cancellation award of the $500,000 hereinbefore described and referred to in the March 26th, 1920, contract (Exhibit 5).

(See Exhibit 16, Record, pg. 83.)

That at this period in the relationship of the parties the subject of Groton going back to receivership was discussed. And the representatives of the Fleet Corporation were ready to take such action, if necessary, to secure the completion of the three (3) vessels under construction.

That Groton did not desire another receivership and sought a new financial arrangement with the Fleet Corporation whereby it could obtain the aid necessary to enable it to complete said unfinished vessels.

That, as a result of negotiations between the parties, the
175 Fleet Corporation finally agreed to advance to Groton, providing the Virginia Shipbuilding Corporation guaranteed the full performance of the March 26, 1920, contract (Exhibit 5), the money necessary to complete the remaining three (3) vessels under construction.

(See Exhibit 19, Record, pg. 85.)

That, as a further consideration for the Fleet Corporation making these advancements to Groton, the representatives of the former insisted that Groton waive all claims to the wood ship, hull, and bill of material to which it was entitled, in accordance with the terms of Article III, section 2, of the March 26, 1920, contract (Exhibit 5). This was agreed to by Mr. Morse, acting for Groton, and accepted as such by the Fleet Corporation and thereafter, in part consideration of the above, money was in fact advanced to Groton, and the three (3) vessels were finally completed and delivered by it to the Fleet Corporation.

That the reconciliation of accounts concerning wooden vessels referred to in Article XII, section 2 (Exhibit 5), has never been completed. The Groton officials did not consider the same necessary. It has therefore been postponed or waived by the joint action of the parties.

That by the contract of March 26, 1920 (Exhibit 5), and in accordance with its terms, the parties intended to and did adjust all differences then existing between them to that date. And Groton, in Article XII, section I, of said Exhibit 5, released the Fleet Corporation from all claims, demands, causes of action, etc., which it had against said Fleet Corporation to that date, except the matters specifically excluded.

That the Fleet Corporation did obtain benefits and considerations and so did Groton by reason of the contract of March 26, 1920 (Exhibit 5).

176 That no fraud, deceit, duress, or misrepresentation was resorted to by the representatives of the Fleet Corporation to cause the contract of March 26, 1920, to come into existence; neither was it executed under a mutual mistake of fact. Nor was any claim made that it was obtained by fraud, duress, or the like or had been executed under a mutual mistake of fact until the litigation in question had long passed the point of its primary stage.

That altho the parties hereto have been in controversy over the subject matter set forth in the bill of complaint since April, 1920, no rescission of the contract was ever asked for at any time until the present bill was filed in July, 1923.

That the March 26, 1920, contract (Exhibit 5), Article XII, paragraph 2, thereof provides that a reconciliation of the accounts of Groton in respect to the construction of wood vessels shall be continued with respect to items upon which a reconciliation or agreement has not been reached, etc., etc.

That Article XIII of said contracts (Exhibit 5) provides that all disbursements, settlements, and adjustments made under or growing out of this contract (Exhibit 5) shall be subject to such audit or audits as may be determined by the general controller of the Fleet Corporation, and any omissions, irregularities, or discrepancies found by a future audit shall be subject to adjustment.

That there has been no reconciliation of accounts as provided for in paragraph 2 of Article XII of the March 26, 1920, contract (Exhibit 5). Hence, if anything is due Groton by reason of the wood-vessel contracts referred to in bill of complaint as

177 Exhibits 1 and 2, the same is not the subject for consideration under the issues raised by the first and fourth separate defenses, and this particular phase of the controversy has not been considered in deciding the issues herein, but is properly left as a subject for specific and further judicial consideration.

That it is due to the conduct of Groton that the portion of the March 26, 1920, contract (Exhibit 5) which provides for an audit, etc., has not been complied with.

That a complete accounting, however, on the main case is not essential to the determination of the issues raised by said first and fourth separate defenses, respectively.

That the claim that large quantities of lumber, material, etc., paid for by the Fleet Corporation were taken into the possession of the latter and no credit given to Groton under the various contracts referred to is not sustained by the proof offered.

That the contract dated March 26, 1920 (Exhibit 5), is not null
d void.
That it was operative and of force and effect and so considered
the parties thereto until the filing of this bill of complaint.
That Groton accepted and retained the benefits received under said
ntract.
That said contract is binding, as an accord and satisfaction of all
aims according to its terms, between the parties thereto, except as
otherwise excluded or reserved therein.
That said contract should not be set aside either in whole or in
part.
78 That the Fleet Corporation during the period of time re-
ferred to in the pleadings pursued a course of conduct similar
that of any public business corporation and is liable to be sued
nd can sue as such corporation.
That the Fleet Corporation did assume a personal liability under
he contracts referred to in complaint and is a proper party to this
laim.

I

Conclusions as to the first separate defense

(a) That the defendant has sustained the burden of proof on
he issues raised by the first separate defense, so called.
(b) That the issue, as to whether the contract of March 26, 1920
(Exhibit 5), was accepted by Groton in full settlement as just com-
pensation for and in accord and satisfaction of any and all claims
existing in its favor up to said March 26, 1920, exclusive, however,
of the matters reserved therein and for further reconciliation or
audit, I hereby find in favor of the defendant.
(c) That all the issues raised by said first separate defense I
find in favor of the defendant.

II

Conclusions as to the fourth separate defense

(a) That the defendant has not sustained the burden of proof on
the issues raised by the fourth separate defense, so called.
(b) That the defendant failed to prove by a preponderance of
evidence that the Fleet Corporation was not the party with
179 which Groton contracted and that it contracted or had been
dealing with the United States.
(c) That all the issues raised by the fourth separate defense I
find in favor of the complainant.

I

Reasons for conclusions as to the first separate defense

Altho by the contract of March 26, 1920, Groton contemplated that money up to the amount referred to therein would be furnished by the Fleet Corporation to complete the vessels referred to, the main purpose, however, which Groton expected to accomplish by the contract, was the lifting of the receivership then pending and its going back into possession of its shipyards.

No proof has been offered to justify the claim of Groton or to warrant a finding that large quantities of materials, lumber, etc., were taken by the Fleet Corporation and no credit given to Groton therefor.

No proof was offered that any official, representative, or agents of the Fleet Corporation or of the Shipping Board or of the Government in any way practiced fraud or deceit on Groton or its representatives. Nor was any proof offered that they or either of them by misrepresentation or duress caused Groton to enter into or to execute the March 26, 1920, contract (Exhibit 5), nor that the same was executed by Groton because of any such claimed acts or practices.

Groton was at liberty to examine and had the opportunity if desired to inspect its books at its plant. Its representative, Mr. Gordon, received a letter from Commissioner Scott to that effect.

(Testimony of Gordon, Record p. 287.)

180 Messrs. Gordon & Blodgett, representing either Groton or some individual stockholder thereof or both and offered as witnesses, did not rely upon any information submitted by the Fleet Corporation or its representatives as to the cost of construction of vessels, altho these men participated in the conferences held before and after the terms of the March 26, 1920, contract (Exhibit 5) were agreed upon.

The proof discloses that Groton was tendered a wood ship the "Columbine" under the terms of Exhibit 5 and refused it.

The proof discloses that Groton subsequently waived its right to the ship, the Ferris-type hull, and bill of material #500, referred to in said contract of March 26, 1920 (Exhibit 5), in consideration of the Fleet Corporation agreeing to and actually advancing additional sums of money to it under the April 29, 1920, agreement. (See Exhibit 19.)

The Fleet Corporation offered to have an audit made in accordance with the terms of the March 26th, 1920, contract (Exhibit 5), but the same was declined by Groton's officials and Groton is bound by said action.

The extension of time for payment of the two mortgages of $1,000,000 and $800,000 referred to in the record; the advancement of $250,000 to settle with creditors; the lifting of the receivership and the return of the shipyards, constitute but a part of the consideration upon which Groton became a party to the March 26, 1920, contract (Exhibit 5).

The representatives of Groton, prior and subsequent to the visit to Washington to attend the conference of the Shipping Board officers referred to in the record, were cognizant of the desire
181 of the Fleet Corporation and the board officials to discuss the subject of finances, as the same affected the completion of the work on the three unfinished vessels referred to, as soon as possible, without, but under receivership if necessary.

The Fleet Corporation and its representatives expresed an opinion to Groton's representatives that it would be more costly for the Fleet Corporation to have said vessels completed under receivership.

Mr. Strong, the only official of Groton who testified, did not rely upon any information furnished by the Fleet Corporation as a basis for entering into the March 26, 1920, contract (Exhibit 5).

Mr. Gordon, representing the Morses and Groton, requested a copy of the Eason statement, so-called, which contained, it was claimed, a record of the debits and credits between Groton and the Fleet Corporation growing out of the contract in question.

It was refused on the ground it would "disclose" the Fleet Corporation's trading position in the matter. (See Record, page 292.)

At the so-called Washington conference referred to, held on March 30, 1920, Colonel Abadie of the Shipping Board asked the following question: "In other words, is Mr. Morse going to be able to finance himself so as to be able to complete these ships without our having to put up more money for the completion of the ships?"

To this inquiry the record discloses the following:

"Mr. Gordon. He will have to conduct himself in accordance with the contract which we drew in New York the other day, doing only what is required under that contract."

182 The contract referred to is the March 26, 1920, contract (Exhibit 5). (See p. 10, defendant's Exhibit X, Record p. 384.)

Altho Groton, under March 26, 1920, contract (Exhibit 5) agree to provide the money necessary in excess of the amounts to be furnished by the Fleet Corporation to complete said vessels, it was unable to carry out its part of the contract and unable to provide any money in excess of the amount furnished by the Fleet Corporation under the contract to complete said vessels until advances were made

by the Fleet Coroporation under an agreement by which the Virginia Shipbuilding Corporation gave security for such advances.

The Fleet Corporation in entering into the contract of March 26, 1920 (Exhibit 5), believed that Groton would finance itself over and above the amount furnished by the former and necessary to complete said vessels, and relied upon the statement of Groton's representatives to that effect.

The Fleet Corporation after March 26, 1920, and up to April 19, 1920, advanced about $100,000 to meet Groton's pay rolls.

The sum of $170,000 due as interest on the mortgages for $1,000,000 and $800,000, referred to in the record, and insurance premiums of $145,657 paid by the Fleet Corporation, have also become a charge against Groton.

The proof discloses that all questions concerning the bill of materials #500, the Ferris-type hull, and the Ferris-type ship which Groton was entitled to, under the March 26, 1920, contract (Exhibit 5) and which, according to the proof it waived, as part
183 consideration for the advancement of the $1,200,000 by the Fleet Corporation, which amount the Virginia Shipbuilding Corporation also went security for, ceased to be a subject for discussion between the parties from at or about the date of the advancements referred to until the instant action.

The proof discloses that no officials of Groton or its representatives in charge of its affairs relied solely upon any statement made or information furnished by any representatives of the Fleet Corporation or of this Government as a basis for entering into the March 26, 1920, contract (Exhibit 5).

The proof discloses that neither Mr. Charles Morse or any other official of Groton was misled or deceived concerning the facts with reference to the subject matter of any of the contracts entered into prior to March 26, 1920, or the cost, etc., of the construction of the vessels referred to therein.

The proof discloses that Groton's officials did not rely upon any statement made or information furnished by any person other than those connected with Groton relative to the cost of the vessels referred to under the terms of the March 26, 1920, contract (Exhibit 5).

All of the evidence and proofs offered and herewith made part of this report justify the finding and conclusion herein reached as to the first separate defense.

II

Reasons for conclusions as to the fourth separate defense

The proof discloses that the United States Shipping Board
184 Emergency Fleet Corporation was organized as a corporation under the laws of the District of Columbia with powers, duties, and responsibilities like any other corporation organized in that jurisdiction.

Its organization was authorized by section 11 of the "shipping act of 1916," which allowed the United States Shipping Board to form such a corporation for the purposes of purchasing, constructing, equipping, leasing, chartering, maintaining, and operating merchant vessels in the commerce of the United States.

The United States Shipping Board was a governmental agency and department of the Government and as such was given the right "for and in behalf of the United States to subscribe for, purchase, and vote not less than a majority of the capital stock of a corporation so organized, etc."

Congress, in considering the legislation on this subject, intended that a corporation like the Fleet Corporation, organized in accordance with the "shipping act" referred to, should have all the characteristics of a private corporation.

The debates in Congress of the urgent deficiencies act passed June 17, 1917, sustain this claim. (Complainant's Exhibit 13, Record p. 414.)

The debates on this subject also disclose that Congress in considering the purposes for which such a corporation was to be organized drew a line of distinction between a Government agency such as claimed by the defendant to exist in this case which would be bound by all of the red tape and restrictions incidental to such agencies and a corporation such as was contemplated and which could do business as a distinct entity free from such restrictions.

185 The defendant does not seriously deny but that under the "shipping act of 1916" the Fleet Corporation would be liable individually upon a contract made by it. It claims, however, that the "act of June 15, 1917," changes this situation by its provisions relative to the delegation of powers by the President to the Fleet Corporation.

The President of the United States did delegate to the Fleet Corporation certain extraordinary powers, such as requisitioning materials and commandeering plants. These powers, if exercised,

would, however, be on a different basis than those of making contracts without asking for public bids or free to expend money as any other private corporation might do.

The United States Supreme Court in the Lake Monroe case, 250 U. S. 246; 253–4, referred to the debates in Congress on this subject matter as showing that the "act of 1917" referred to and the "Executive order of July 11, 1917," did not change the status of the Fleet Corporation as it had previously existed.

These debates were also referred to by the court in the cases of Lord and Burnham Co. v. Fleet Corporation, 265 Fed. 955; Gould Coupler Co. v. Fleet Corporation, 261 Fed. 716.

The contract, Exhibit 1 of the bill of complaint, also referred to as Exhibit E and called "contract No. 16 WH," for the construction of twelve (12) wooden hulls, etc., executed June 15, 1917, was between Groton and the Fleet Corporation. This specifically describes the place of organization of the Fleet Corporation and is exe-
186 cuted in the way corporations usually execute contracts. This contract came into existence, prior to the President of the United States delegating any of the powers referred to, either to the Fleet Corporation or any one else.

Other contracts were entered into between Groton and the Fleet Corporation, "representing the United States of America." These are particularly referred to in the bill of complaint as Exhibits 3 and 4, and also known as "contract No. 57 S C" and "contract No. 225 S C," respectively.

A contract supplemental to Exhibit 1 or Exhibit E above referred to was entered into by Groton on September , 1918, and is referred to in the bill of complaint as Exhibit 2 and also as Exhibit F in the record. This was not executed by the Fleet Corporation in the same manner as the original contract, Exhibit 1, but contains the additional words, "representing the United States."

The Supreme Court on this phase of the subject, however, has said:

"We attach no importance to the fact that the second contract alleged to have been illegally extorted was made with the Fleet Corporation representing the United States of America. The Fleet Corporation was the contractor, even if the added words had any secondary effect." (Sloan Shipyards case, 258 U. S. 549.)

In each of the contracts Exhibits 1, 3, and 4 referred to in the bill of complaint and also called "contract No. 15 W H," "contract 57 S C," contract 225 S C," respectively, the first being for
187 12 wooden hulls, etc., and the others for steel vessels, the Fleet Corporation is designated as "owner."

While Article V of Exhibit 4 provides in substance that title to all vessels, etc., shall be in the United Statse of America, it further provides that title to other material in the yard shall be in the Fleet Corporation.

In the contracts referred to there also appears the provision that insurance in case of losses payable to the Fleet Corporation or the contractor as their respective interest may appear.

Under the "shipping act of 1916" Congress intended that the Fleet Corporation should not be a mere instrumentality of the United States, but, on the contrary, a distinct corporate entity capable of contracting in its own name as principal and authorized to sue and be sued and be liable on contracts. (Astoria case, 258 U. S. 569; Second Eastern Shore case, 290 Fed. 115; United States v. Wood, 266 U. S. 680.)

Even though the words "representing the United States of America" follow the Fleet Corporation, in describing one of parties in some of the contracts referred to in the bill of complaint, the Fleet Corporation and not the United States is the contractor and the real party in interest with respect to the acts and transac-
188 tions set forth in the bill of complaint. (Downey case, 294 Fed. 641; Fleet Corporation v. Southern Atlantic Dry Dock Co., 300 Fed. 55, C C A, 5th Circuit; Florida Grain Elevator Corp. v. Fleet Corp., 300 Fed. 169; United States v. Matthews, 282 Fed. 267, C C A, 9th Circuit.)

In disbursing money the proof discloses no distinction was made on the books of the Fleet Corporation between payment out of the first fifty million dollars appropriated by Congress for the purchase of all the stock of the Fleet Corporation and payments made out of subsequent appropriations on account of the contracts referred to in the bill of complaint. (Finnigers testimony, Record pp. 240–6.)

Under contract known as "contract No. 225 S C," Exhibit 4, in bill of complaint payments for work done were also made from a joint fund deposited in the name of the Fleet Corporation and Groton, and withdrawals were on vouchers issued by Groton and countersigned by the resident inspector and resident auditor of the Fleet Corporation. (S. Z. White's testimony, Record pgs. 192–6.)

The Fleet Corporation also authorized various officers to establish such funds and to sign or countersign checks thereon. (Complainant's Exhibit 12.)

The taking of the mortgages for $1,000,000 and $800,000,
189 respectively (complainant's Exhibits 8 and 10), in the name of the Fleet Corporation and all its dealings in connection therewith, tend to establish the position of the Fleet Corporation as

a party to these contracts and its action is similar to that of any private corporation under the same circumstances.

The proof discloses that the transactions and contracts referred to in the bill of complaint are between Groton and the Fleet Corporation and not with the United States of America.

The evidence and proof offered and herewith made part of this report sustain the finding that the Fleet Corporation is the proper party defendant to this cause of action and that the same can be maintained against it under the pleadings as on file.

The foregoing report is herewith filed with the court for its advisement in advance of the main issue in this action as provided for in the order of reference as on file.

Respectfully submitted.

DAVID E. FITZGERALD,
Special Master.

Dated at New Haven, Connecticut, this 4th day of October, 1926.

190 In United States District Court, District of Connecticut

In Equity No. 1669

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY OF GROTON IRON WORKS, complainant

AGAINST

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, defendant

Statement of evidence before special master

Hearing, August 20, 1924, before the Hon. David E. FitzGerald, special master

Appearances of counsel

For complainant, Herbert B. Lee, Esq., H. Starr Giddings, Esq., Thomas G. Flaherty, Esq., Robert P. Stout, Esq.; for defendant, Henry F. Parmelee, Esq., special assistant to the Attorney General.

Offers in evidence

Mr. PARMELEE. I offer in evidence the following exhibits offered in the case of the United States against Groton Iron Works,
191 Equity No. 1634: Exhibits E, F, G, H, and I, being the five contracts attached to and referred to in the bill of complaint as Exhibits 1, 2, 3, 4, and 5.

Defendant's Exhibits E, F, G, H, and I are the same exhibits so marked in case No. 1634, are admitted in this case, and are identical with complainant's Exhibits 1, 2, 3, 4, and 5 in the bill of complaint in case No. 1669.

Mr. PARMELEE. I offer also the Executive order of President Wilson dated July 11th, 1917, delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation. Also the Executive order of June 18, 1918, delegating to the Fleet Corporation the powers granted to the President by the act of Congress amendatory to the emergency shipping legislation and approved April 22, 1918. Also the Executive order dated December 3rd, 1918, delegating to the Shipping Board and the Fleet Corporation, respectively, powers granted to the President by acts of Congress relative to the emergency shipping fund and approved on or prior to November 4th, 1918.

Mr. GIDDINGS. Complainant offers in evidence the certificate of incorporation and by-laws of the United States Shipping Board Emergency Fleet Corporation.

(Received and marked "Exhibit 6.")

192 WILLIAM Z. WHITE, witness for the complainant.

Direct examination by Mr. GIDDINGS:

I am a public accountant of New London, Connecticut. I first became acquainted with Groton Iron Works, in July, 1918. At the beginning I was material superintendent in charge of all the receiving and distribution of materials up to the time the receivers were appointed in April, 1919, at which time I was appointed controller of the receivers and remained in that capacity up to April 3rd or 4th, 1920. On April 7th, 1920, I was appointed special representative of the Emergency Fleet Corporation at the yard of Groton Iron Works. I remained there until September 1st, 1920; I also represented the receivers in liquidating their claims and the payment of dividends, and so on; had represented the receivers up to the time they were discharged, and later the trustee in bankruptcy, as accountant. During my connection with Groton Iron Works and the Fleet Corporation I had occasion to know, of my own knowledge, how the various matters were handled between the Fleet Corporation and Groton Iron Works and the receivers in respect to payment of insurance, and so forth. I know how orders were given for alterations and extra work, and so on, and am familiar with the provision of contract 225, S. C., Exhibit H, that certain monies due for the construction work be deposited in the name of the owner and issued on countersignatures in payment for material, and so on. Under that provision there was a payment made by the Fleet Corporation,

or a deposit made, in the American Exchange National Bank in t
joint name of the Emergency Fleet Corporation and Groton Ir
Works, and later changed, when Groton Iron Works w
193 in the hands of receivers, to the name of the receivers a
the Fleet Corporation jointly. That deposit was about a milli
and twenty-six thousand dollars. Payments were made out of that
vouchers which originated in the plant of Groton Iron Works, w
approved by the two representatives of the Emergency Fleet Cor
ration, their resident inspector, and resident auditor; the checks w
drawn by Groton Iron Works, signed by the corporation offici
and then the voucher and check attached were sent first to the B
ton office and later to the New York office of the Fleet Corporatio
the voucher was audited; check was sent to the disbursing offic
countersigned by him and I believe by one other officer of the Fl
Corporation, the district comptroller or the district manager—th
changed at a later date—and then the check was sent direct to t
vendor; that was in payment of materials, supplies, and pay ro
There were no progress payment checks under that contract.

The MASTER. Mr. Giddings, right here, so that record will sho
there is no question but that Exhibit H—contract H referred to—
your number 4 in the bill of complaint?

Mr. GIDDINGS. That is right.

The insurance on the plant and equipment and machinery w
carried by the Groton Iron Works or the receivers with loss pa
able to the Emergency Fleet Corporation. The insurance on t
vessels, launching risk, and on all materials entering into the vess
was—that is what is called builder's risk insurance, and it cov
all those hazards—was carried by the Emergency Fleet C
194 poration and billed on vouchers prepared by them in th
insurance department to Groton Iron Works——

WITNESS (continuing). There were orders given for alteratio
and extra work under this contract 225 through the officer of t
district manager of the Fleet Corporation in New York, Mr. Ri
Any technical changes and disputes under the construction portio
of the contract were referred to the district managers of the Fl
Corporation. As to article 6 of the contract which gives the v
president of the owner certain rights and duties in case of disp*tues*
do not recall that there were any construction disputes that we
beyond the district offices; they were generally settled in a mo
or less friendly way with the district manager and his techni
assistants. Of course there were a lot of financial disputes.
know who appointed inspectors under this contract 225, Exhibit
The first steel contract in which there was an inspector appoint
by the district officer of the Fleet Corporation, the Boston off

of the Fleet Corporation under contract 57, and that same inspector retained his position through contract 225; the two contracts ran concurrently—that is, the construction. I have personal knowledge that he was an employee of the Fleet Corporation.

Mr. FLAHERTY. You said American Exchange Bank; New London National was that?

WITNESS (continuing). Yes. The article shows they kept different banks for different contracts, but all checks on the American Exchange National Bank in 225 went direct to the disbursing officer.

195 Cancelled checks never came to us at Groton; they went direct to him. W. J. Coogan was the disbursing officer. He was appointed to the best of my knowledge through the comptroller's office of the Fleet Corporation in Philadelphia. The money in this joint fund was, at some subsequent time, taken out by the Fleet Corporation. There was a withdrawal of a balance in both funds, in both contract 225 and 57, both the American Exchange National Bank and the New London City Bank, by the disbursing officer of the Emergency Fleet Corporation, Mr. Coogan. I had a conversation with him about it, later, when we came to reconcile the account; or at least, we were notified by the New London City National Bank that the account had been withdrawn; it was withdrawn without any countersignature of any of the receivers or Groton Iron Works; we had no knowledge it was withdrawn; it was just withdrawn on the signature of the Emergency Fleet Corporation.

Q. What was the conversation you had?

Objected to as irrelevant.

The MASTER. The defense is that the Emergency Fleet Corporation, with respect to the transactions set forth in the bill of complaint and the relief prayed for therein, was acting solely as the agent of the United States—that is the defense—that whatever they did they did as that, and that the United States and not the Emergency Fleet Corporation was holden. That is substantially the defense, isn't it?

Mr. PARMELEE. That is to be the defense.

Admitted.

(Exception by defendant.)

196 WITNESS (continuing). I asked Mr. Coogan why he withdrew those funds without the countersignature of the receiver, and he replied that those funds belonged to the Emergency Fleet Corporation and that he could withdraw them without any countersignature of Groton Iron Works. The procedure in regard to payments of orders for changes, and the other matters concerning which

you testified, was not the same under this contract 225 S. C., Exhibit H, as it was under the earlier contract 15 W. H., the Wood contract, and 57—that is Exhibits E and G. There were different provisions in the Wood contract, 15 W. H. and 57 S. C. Those two contracts were practically the same as to progress payments, but as to contract 225 there were to be no progress payments made. In connection with the changes and alterations on the boats, in the technical construction of the boats, instructions received, and procedure was the same under all three contracts, but the provisions of progress payments and advances were different. In all cases we got our instructions from the Fleet Corporation. There were different officers on the Wood contracts than there were on the steel contracts; the Wood contract officers were in New York at the start, whereas the steel contracts on 57 S. C., when that was first started was under the Boston division; later the Boston division was abolished and it was all handled through New York.

Cross-examination by Mr. PARMELEE:

WITNESS (continuing). Our instructions as to alterations and so forth that I have testified to were all in writing. When changes or extras were required, the change was initiated in the Emer-
197 gency Fleet Corporation by a letter authorizing us to make the change; the naval architect of the Groton Iron Works, Mr. Trowbridge, immediately proceeded to get out a cost estimate of the cost of that change, and that cost estimate was submitted to the district manager's office of the Emergency Fleet Corporation, and if it was correct and the cost was not excessive and he approved the cost, he O. K.ed the estimate and it was returned; but it was in every case initiated by the Emergency Fleet Corporation; the changes were always started by the Fleet Corporation.

HEARING, SEPTEMBER 26, 1924

NORMAN CHARLES FINNINGER, witness for defendant.

Direct examination by Mr. PARMELEE:

My address is Truell Court, Plainfield, New Jersey. I am an accountant, in the employ of United States Shipping Board, at present assigned to the Department of Justice and in that capacity attached to the office of the United States Attorney for the Southern District of New York. I have been engaged in this capacity in connection with this Groton situation that is the subject matter of this suit. I have been an accountant with the United States Shipping Board about six years; the only interruption was about two weeks when I enlisted as an officer in the war. I enlisted in Septem-

ber, but the Shipping Board asked for my release for a month, so I returned. I don't believe I was ever off the pay roll, because my annual leave carried me through a great deal of the time. I first went with the Shipping Board about November, 1917. With that exception I have been with them ever since. I have recently
198 been to Washington at your request to secure information in this matter, and have made an examination of the various contracts made by the Fleet Corporation up to June 13th, 1917, inclusive. The expenditures and commitments by contracts of the Emergency Fleet Corporation prior to June 15, 1917, were in excess of fifty million dollars. The amount of commitments made by the Fleet Corporation for ship construction up to and including June 13, 1917, was seventy-six million eight hundred and fourteen thousand eight hundred and forty dollars committed on contracts from 1-CC to 14-W, inclusive of 14-W. There were fourteen contracts entered into prior to that date, requiring an expenditure of the amount stated. When I first went with the Shipping Board there was an organization there. Later I was the head of the bureau of audits and accounts, which is in charge of all of the records from the beginning of the incorporation or construction until 1922, and from my own knowledge I am able to state to the certain commitments for machinery and miscellaneous material, as well as the administration expenses as recorded on the books at that time. They appeared on the books as having been commitments and expenditures prior to June 15, 1917. I secured this letter from the files of the United States Shipping Board Emergency Fleet Corporation. I know the signature at the foot of that letter "C. W. Morse," and am familiar with his handwriting.

Mr. PARMELEE. I offer in evidence a letter from C. W. Morse to General George W. Goethals, dated May 4, 1917.

Mr. GIDDINGS. I object to it on the ground that it does not appear that Mr. Morse was an officer of the Groton Iron
199 Works or that any admission or statement by Mr. Morse can in any way affect the trustee in bankruptcy.

Mr. PARMELEE. The purpose is to show that he knew he was dealing with the United States under an appropriation and not with the Emergency Fleet Corporation as a private contractor.

Mr. GIDDINGS. I do not think it has that effect and I do not think it is admissible.

The MASTER. There is no question about the signature?

Mr. GIDDINGS. We make no objection on that ground.

Mr. PARMELEE. I ask the gentlemen if they deny that Mr. C. W. Morse was president of the Groton Iron Works?

Mr. GIDDINGS. Or a director.

Mr. STOUT. We deny he was president.

Mr. PARMELEE. That proof will be forthcoming.

Admitted.

(Exception by complainant.)

Mr. BARBER. I ask the witness if this letter is not a Government exhibit in a pending case.

WITNESS (continuing). Well, it was a Government exhibit in the Morse war fraud case and it may be used in a mail fraud case that is coming up.

Mr. PARMELEE. We will read it into the record: "United States Steamship Company, General Offices, 50 Broad Street, New York.

May 4, 1917. Office of the President. General George W.
200 Goethals. United States Shipping Board, Munsey Building, Washington, D. C. Sir: The gentleman whom I spoke of to you yesterday at Washington thinks about two hundred million dollars will be appropriated for you next week. Meanwhile, the gentlemen who should be seen to hasten the matter are Senator Martin of Virginia, chairman of the Appropriation Committee, and Representative Fitzgerald, of New York, of the same position in the House of Representatives. The matter was laid before him today, and he thinks next week will produce results for you. Yours truly, C. W. Morse." In the lower left-hand corner initialed "C. W. M.," and an oblique line and "A. D."

WITNESS (continuing). I secured this letter you show me on the letterhead of the United States Steamship Company from the files of the United States Shipping Board. I know the signature appearing at the foot of it—B. W. Morse, secretary of Groton Iron Works, and one of the sons of C. W. Morse, and engaged in business, to my knowledge, with C. W. Morse at that period. Mr. Eads Johnson was district officer of the United States Shipping Board Emergency Fleet Corporation located at New York.

Mr. PARMELEE. I offer this letter of June 6, 1917, to Mr. Eads Johnson, signed "Groton Iron Works by B. W. Morse, secretary," and ask that it be read into the record.

Mr. GIDDINGS. I object on the ground it is incompetent, irrelevant, immaterial.

The MASTER. I will admit the letter so far as the entire transaction relates to these contracts.

201 (Exception by complainant.)

Mr. PARMELEE. Will your honor permit this to be read into the record rather than made an exhibit? On the same letterhead as the last letter, "United States Steamship Company, Office of the President, June 6, 1917. Mr. Eads Johnson, 115 Broadway, New York City. Re Government contract for construction of wooden

hulls only. Dear Sir: We, the undersigned, having read your Form E contract (lump-sum basis) for 'wood hulls without propelling machinery,' will undertake to construct twenty (20) such hulls as per contract within fourteen (14) months from date of contract, for three hundred thousand ($300,000.00) dollars each, subject to the following conditions: First. Schedule of labor prices and working hours as attached to be guaranteed by the owner. All increases in rates or decreases in hours to be paid for by the owner in addition to the contract price. Second. Owner to furnish contractor with lumber delivered at contractor's yard, passed by the Government inspectors, and not subject to rejection, finished four sides, delivery as required as by contractor, at a price of not to exceed forty-eight ($48) dollars per M. Any delay in delivery of lumber shall be credited to the time allowed for the construction of the ship. Contractor reserves the right to purchase such lumber as it may require from other sources, same to be in accordance with Government requirements. Third. The owner shall not have the right of rejecting any workman-
202 ship or material after the same has once been approved either verbally or in writing by any representative of the owner. Fourth. In case the contractor is dissatisfied with the owner's representative, the owner shall, upon application from the contractor in writing, withdraw such representative and substitute other representation. Fifth. The owner, if desired, is to furnish contractor with iron and steel, fabricated or unfabricated, passed by owner's inspectors, not subject to rejection, delivered at contractor's yard, at three dollars and sixty cents ($3.60) per hundred pounds. Sixth. Article 3, Form E—I don't know what that is—" contract referred to, next to the last sentence, shall be amended to include any delay in delivery of material or machinery, accidents, or other causes beyond the control of the contractor. Seventh. Inasmuch as little, if any, work to be done by the contractor comes under the jurisdiction of the United States Steamship Inspection Service, the hull being constructed under the jurisdiction of the American Board of Shipping, in accordance with plans and specifications approved by said board, and the machinery and auxiliaries being installed by the owner, the contractor does not feel that such service applies, and therefore the contractor will not be responsible for any action of said inspection service in connection with the contract. Eighth. In view of the advice received that three hundred thousand ($300,000.00) dollars is the maximum price per hull at which any contract has been or will be let, it is agreed that in the event the owner or any
203 other similar representative of the United States Government has found or may find it necessary to award additional contracts for hulls similar to the kind herein referred to at prices in

excess of this contract price then the price of three hundred thousand ($300,000.00) dollars hereby made is to be advanced to such increased figure.

This offer is to remain open until recalled in writing by the contractor, not longer, however, than a period of twenty days from date hereof.

Notification will be appreciated by the contractor should any objection be raised to any part of this proposition by the owner, in which event the contractor will consider making any modifications that may be recommended. Yours very truly, Groton Iron Works, by B. W. Morse, Secretary." Initialed "BWM:F."

Mr. PARMELEE. I offer in connection with this a letter of June 6 to General Goethals from Eads Johnson; it adds nothing to the case and confuses the record——

Mr. GIDDINGS. No; all that I would like to have go in is the full salutation, or whatever you call it, the address and the way it is signed.

Mr. PARMELEE. The letter offered in connection with this is on the letterhead of the United States Shipping Board Emergency Fleet Corporation. It is dated "New York, June 6, 1917," addressed to "General George W. Goethals, general manager, United States Shipping Board Emergency Fleet Corporation, Munsey Building, Washington, D. C.," transmitting the letter just read in evidence. It is signed by Eads Johnson.

204 Mr. GIDDINGS. How does he sign that particular one?

Mr. PARMELEE. Simply "Eads Johnson."

Mr. GIDDINGS. All right. I think that is enough.

By Mr. PARMELEE:

Q. Mr. Finninger, I have here what purports to be copies of minutes of the board of directors of the Groton Iron Works. Can you inform me as to the date of the meeting to which the minutes appearing on sheet 26 relates?—A. I can not give the exact date, but they were prior to April 24, 1917, and about a day or two after the declaration of war of the United States. War was declared by the United States about April 6, 1917.

Mr. PARMELEE. I offer in evidence an extract from the minutes of a meeting of the board of directors of the Groton Iron Works held prior to April 24, 1917; the minutes of a meeting of that board held April 24, 1917; the minutes of a meeting of that board held on June 12, 1917; likewise one held on June 20, 1917, and ask that these sheets on which these appear be marked as a single exhibit.

(Received and copy marked "Exhibit P.")

WITNESS (continuing). I identify this to be a circular letter from George W. Goethals, general manager, dated June 15, 1917. It is a

general order that was issued by the United States Shipping Board Emergency Fleet Corporation by General Goethals when he was its general manager. I only know from my experience from the Government that it was sent to all contractors and all people interested in the Shipping Board business.

905 Objected to.

Motion to strike out the testimony.

The WITNESS. I said I did not know of my personal knowledge, but from my experience and those I associated with it was sent to the contractors and all parties that were in the United States Shipping Board Emergency Fleet business.

The MASTER. That answer may stand.

Mr. PARMELEE. I offer this circular letter with data sheet attached in evidence, and ask it be marked as an exhibit.

Mr. GIDDINGS. I object to its admission on the ground that there is no competent evidence that this ever came to the notice of the Groton Iron Works, or was even mailed to them, or that it was even mailed to anyone, or ever put into effect.

Mr. STOUT. The witness was not with the corporation at the time it was sent out, and it has not been sufficiently proved by any competent evidence whether it was sent out or not.

Marked "Defendant's Exhibit Q for Identification." Circular letter dated June 15, 1917, four sheets.

WITNESS (continuing). I got this out of the files of the United States Shipping Board Emergency Fleet Corporation.

November, 1917, I was assistant local auditor at Hog Island; in the early part of 1918, local auditor of the Barbor Asphalt Paving Company, at which time I severed my connection to enlist in the Army; returned in about three weeks and I was assistant to the assistant general auditor investigating the home office accounts; 1920, I was assistant to the chief traveling auditor, and

906 the latter part of this year was made head of the bureau of audits and accounts, which position I held in conjunction with the district comptroller's office of New York until the latter part of 1921. Subsequently I have been in a position to be familiar with the manner in which the Emergency Fleet Corporation secured its monies and expended the same only after investigation into the accounts of the home office records to show how those transactions were put there on the records, but never individually in charge of the treasury funds. It appears from the books, which I have examined, how congressional appropriations found their way to their ultimate object from the Emergency Fleet Corporation, does it not? In general the records of the Emergency Fleet Corporation show, in the early 1917, that the appropriations were made by Congress,

authorizing the Secretary of the Treasury to disburse certain monies to the United States Shipping Board, such as the original fifty million dollars for capital stock; this money in turn had to be given to the Shipping Board, was transferred to the United States Shipping Board Emergency Fleet Corporation, where in turn it was expended on vouchers signed by the proper officials. The same operated with the appropriations of June 15, 1917, for approximately four hundred and five millions of dollars was also disbursed in a like manner as above stated, as applicable to the fifty million appropriation. The requisitions by the Shipping Board on the Secretary of the Treasury was mostly in detail, but when deposited in the bank was mixed with other appropriations. In each case where I said "Secretary of the Treasury" I think I meant the Treasury of the United States. It was the Secretary of the Treasury. This
207 paper you show me is a copy of requisition 39, of the United States Shipping Board, dated September 22, 1917, on the Treasury of the United States for funds. It is a true copy with the possible exception of signatures and stamps in places indicated therefor.

Mr. PARMELEE. I offer in evidence as illustrating the manner in which monies were withdrawn from the treasury.

Examination by Mr. GIDDINGS:

WITNESS (continuing). The words in the middle of this page opposite the "title vice chairman," put in in typewriting refers to vice chairman of the Shipping Board itself, and this would be signed by the officer of the shipping board, and may be also signed by the Emergency Fleet Corporation, but very seldom. William L. Soleau here was disbursing officer of the United States Shipping Board, and I think he held some position in the Emergency Fleet Corporation until later, when it was changed, but I think he held the position at that time he was there. There is no substantial change in the form; that is practically the same, except McCall was not in then; these two things only—the form is the same, except the place where approval or disapproval by the general accounting officer is indicated with the cross-mark by the witness.

(Received and marked "Defendant's Exhibit R, Requisition Form.")

Direct examination by Mr. PARMELEE:

WITNESS (continuing). Under the practice of handling Government funds it is the fact that Government agencies are not permitted to make commitments or expenditures in excess of appropria-
208 tions. As I understand, there is a statute to that effect. Yes; that is the practice. I understand that to be in accordance with the requirements of law.

Mr. PARMELEE. I offer in evidence a certified copy of extract from proceedings of the executive committee of the Emergency Fleet Corporation, dated April 29, 1920.

Cross-examination by Mr. GIDDINGS:

WITNESS (continuing). With regard to the commitments made by the Fleet Corporation up to and including June 13, 1917, I give the particulars of those fourteen contracts to the extent that I have them on the memorandum for the record: 1-CC, Merrill Stevens Ship Building Corporation, dated April 29, 1917, 12 composite ships, total $5,712,000; 2-S, Merrill Stevens Ship Building Corporation, dated May 1, 1917, 4, six thousand dead-weight tons steel vessels at $161 per dead-weight ton, totaling $3,864,000; 3-W, Standiford Construction Company, dated May 14, 1917, 10 wooden ships, totalling five million dollars; 4-S, Los Angeles Ship Building & Dry Dock Company, dated May 13, 1917, 8 ships, totalling $10,883,840; 5-W, Peninsula Ship Building Company, dated May 15, 1917, 4 wood ships, totalling two million dollars; 6-W, Sloan Ship Yard Corporation, dated May 18, 1917, 16 wooden ships at four hundred and ninety thousand dollars, total $7,840,000; 7-W, Gray's Harbor Motor Ship Corporation, dated May 19, 1917, 4 wood hulls, totaling $1,260,000; 8-W, Coe Ship Building Company, dated May 21, 1917, 4 wood hulls, total $1,200,000; 9-CC, Terry & Brittain, dated May 24, 1917, 20 composite ships, total $9,640,000; 10-S, Skinner & Eddy Corporation, dated May 28, 1917, 6 steel ships, total $8,400,000; 11-W,
209 Sanderson & Brother, dated June 4, 1917, 10 wood hulls, totalling three million dollars; 12-W, Maryland Ship Building Company, dated June 4, 1917, 6 wood hulls (this was a cost-plus contract with a profit-sharing clause; the estimated cost of the hulls was three hundred and fifty thousand dollars each, and the profit was fixed at twenty thousand dollars per hull, making the total estimated value of contract $2,220,000); 13-S, Seattle Construction & Dry Dock Company, dated June 5, 1917; 10, 7,500 dead-weight ton steel ships, totalling $13,125,000. 14-W, Foundation Company, dated June 13, 1917, 10 wooden hulls (this was a cost-plus contract with profit-sharing clause; the estimated cost per hull was two hundred and fifty-five thousand, and the profit per hull twenty thousand, making the total estimated value of the contract $2,670,000). I do not know whether this list includes all of the commitments made by the Fleet Corporation up to and including June 13, 1917. There were other commitments made, according to the books, for machinery, administration expenses, auxiliary equipment, hemp, rope, and different things that were bought at that time. These other commitments as shown by the books I guess would amount to around a million dollars, taking everything into

consideration; that is only approximate—an estimate. It would be impossible to ascertain the amount definitely; I went through the bills of the corporation. The organization and administration expenses up to June 15, 1917, were approximately not over fifty thousand dollars. I could not give it definitely, but that would be my estimate of their prior to June 15, 1917, administration expenses.

That would only be about three months and the corporation
210 only started. This Groton contract, dated June 15, 1917, was then under negotiation. As to other similar contracts negotiated about that time which the records show, I will say yes, no doubt there were many contracts under negotiation. I have no idea of how many millions of dollars they would run into. I have no doubt there were several million dollars of similar contracts being negotiated prior to June 15. The records show that there were a certain amount of vessels that were requisitioned or being purchased that had already been completed prior to June 15, 1917, by the Fleet Corporation. I think the records show that either certain negotiations were under way or that certain purchases had been made of completed vessels. That would not be in addition to this amount of seventy-six million dollars, because a certain fund was specially given for the requisitioning of vessels. As to this being after June 15, I can not answer without I review the books again, because on June 15, 1917, the four hundred and five million dollars appropriated, part of it was for requisitioning ships. I do not know about the situation before that act went into effect. I do not know if there were any contracts made by the Fleet Corporation to purchase completed vessels or partially completed vessels. If there were, that would be in addition to this amount which is stated here. In other words, these fourteen contracts all were for building new vessels. Referring to the letter of June 6, 1917, signed by B. W. Morse, which was read into the record, this letter refers to Form E contract (lump sum basis). I can get a copy.

(Copy produced and received in evidence—Exhibit 31.)

211 WITNESS (continuing). This particular requisition form I produced relates to the first appropriation of fifty million dollars only in part. It is two million of the fifty. In this way monies came into the treasury of the Shipping Board. Monies got from the Shipping Board to the Fleet Corporation, at the beginning of the corporation, in reviewing the records later, I find, by a check drawn by the Secretary of the Treasury to the Shipping Board, and endorsed over to the Emergency Fleet Corporation. This refers to part of the fifty million dollar appropriation and part of the later appropriation, due to the fact that the early organization of the Emergency Fleet Corporation and the Shipping Board were really

one and the same thing as they worked; in one office was the Shipping Board and the other office was the Emergency Fleet Corporation, acting together in those respects. As to how the money would be actually turned over when the check was not endorsed I have not been able to ascertain, due to the fact that the requisition would be made on the treasury for a blanket amount of money, and in certain instances it would go into the Shipping Board from the treasury fund; they would have different bank accounts; then they would withdraw certain money on that and turn it over to the construction division, United States Shipping Board Emergency Fleet Corporation, which had two divisions at that time, or really in essence, three; they had the operations division, construction division, and then they had a requisitioning committee which formed a part of the operation committee; that is my recollection of the case at that time, and then later reading the records and the papers. I did not find
212 the records showing the method of turning over this money by the Shipping Board to the Fleet Corporation after the first two or three months. I did not dig into the four hundred and five millions of dollars, but I am clear I gave the data on how that appropriation was sent from the treasury to the Shipping Board, and from the Shipping Board to the Emergency Fleet Corporation, and then by the Emergency Fleet Corporation. The Fleet Corporation did keep books as a corporation, but the point, which is very essential, is that the capital stock is not listed on their books; the first general ledger of the Emergency Fleet Corporation does not show the fifty million dollars capital stock; it shows the fifty million dollars as cash coming in and charged to steel construction as an asset. In other words, it comes in as cash, and the offsetting credit does not show to capital stock; the offsetting entry, I think, was the United States Shipping Board, where they got the money from. The later payments show the same way of coming over, charging from the Treasury at Washington or from the Shipping Board. I looked that question up because of this capital-stock question issue; looked all through the ledger to find out where the fifty million dollars was set up as capital stock. In reviewing the books, I did not find it. I did not keep the books at that date, and I could not find it. As to its being entered in the same way that any other loan would be, a loan from anyone else, it is entered as a credit to the Shipping Board. Now, if it was a corporation it would enter as capital stock. The books are on a double-entry system, and several times have been brought up in 1917 and 1918 to put them on an appropriation
213 system which was later put through, but when the books were originally set up, it was a double-entry system of books, and

so the same instance could show the same as an agency of the Government, could show as an agency.

The MASTER. May I ask a question? What was your corresponding entry then, if you had a double-entry system?

WITNESS (continuing). Debit to cash. A credit to the Shipping Board. That was your first entry in the book which you ordinarily would think would be credited to capital stock if it was a corporation.

The MASTER. That was your entry, debit to cash, and credit to the Shipping Board.

The WITNESS. Yes. Then the next one would be credit to cash and debit to steel ships under construction.

The MASTER. Cash received from the Shipping Board. Cash was debited because they had received it?

The WITNESS. That is correct.

The MASTER. The Shipping Board was credited because it paid it out; well, now, was there no other corresponding entry which would indicate just as Mr. Giddings has asked which appeared as though it was a loan?

WITNESS (continuing). Why, no. When the books were first set up the records under Gordon Wells I think that the idea was that he was a corporation man, had been with Wright, Gordon, and naturally set up the books accordingly to show the facts on these different companies and set them up in a double-entry system. Government accounts are not a double entry; they are more or less
214 like municipal accounts are; they have two sets of double entry, one which has the appropriations on one side, and then the others have distribution of the accounts below.

The MASTER. There was nothing like that on this set of books?

The WITNESS. No; of course not. That is, only at the beginning; I would not say that is later, because I shall have to follow it later on this four hundred and five million appropriation; I will have to check up on that; that I have not gone into; I only followed the capital stock.

Redirect examination by Mr. PARMELEE:

WITNESS (continuing). As distinguished from the Emergency Fleet Corporation's books, I have examined the Shipping Board's cash books, but not their ledgers. The Shipping Board indulged in expenditures on its own account as distinguished from the Fleet Corporation. I do not know whether the Shipping Board operated to requisition ships apart from the Emergency Fleet Corporation.

Mr. GIDDINGS. I think it states so in here.

Mr. PARMELEE. I think so; that is my impression that the operating end was the Shipping Board.

WITNESS (continuing). I have before me the check representing the first payments to the Groton Iron Works on their June 15, 1917, contract. The amount of the check is three hundred and sixty thousand dollars. "Pay to the order of the Groton Iron Works, three hundred and sixty thousand dollars." Its date is June 27, 1917, drawn on the District National Bank, Washington, D. C.

215 Mr. GIDDINGS. I want to show whose check it is, and have these facts appear in the record.

WITNESS (continuing). The check is signed by the United States Shipping Board Emergency Fleet Corporation, by the disbursing officer, Mr. H. M. Luckett, and is certified and endorsed by Groton Iron Works.

Exhibit Q for identification, I understand, is a circular letter mailed by the Fleet Corporation to all the contractors with whom the Emergency Fleet Corporation had contractual relations or negotiations pending relative to the building of ships.

Mr. PARMELEE. I offer it in evidence and ask that it be marked as a full exhibit.

(Exhibit Q for identification received as a full exhibit.)

Mr. GIDDINGS. We offer the answer and cross complaint of the United States Shipping Board Emergency Fleet Corporation, filed in an action, entitled, "Town of Groton et al. against Groton Iron Works et al.," in the Superior Court of Connecticut for the county of New London, on or about December 3, 1921.

Objected to as irrelevant, incompetent, and immaterial.

Mr. STOUT. You do not object to that as being a copy?

Mr. PARMELEE. No, no.

Mr. GIDDINGS. Your honor, it is material as being an admission, and the Fleet Corporation, being an ordinary business cor-

216 poration, can make admissions the same as anybody else. They are not imbued with the sovereignty of the United States.

The MASTER. This is number 1669 now; we are still on 1669, Harwood against the Emergency Fleet Corporation?

Mr. GIDDINGS. Yes; that is right. These are admissions by the defendant in that case.

Mr. PARMELEE. If it please the court, the town of Groton brought an action in the Superior Court for New London County to foreclose certain tax liens on the land of the Groton Iron Works. Very ill-advisedly, we believe, the then attorney for the Emergency Fleet Corporation endeavored to—well, they filed that particular document, in answer and cross complaint, seeking foreclosure of these mortgages. That action in the Superior Court was stayed by an order of the United States Court. The taxes have since been paid

in full with penalties and interest and everything else they coul
think of up to the minute they were paid and this action has bee
discontinued, and I submit that that answer and cross complain
unverified, is of no consequence whatever and is inadmissible. W
can not be bound by anything that Mr. Berry or anybody el
put into a pleading in that action.

The MASTER. This is an action purporting to have been brough
by the Assistant United States Attorney.

Mr. GIDDINGS. I think there is no doubt, if your honor plea
that pleadings are certainly admissible as admissions.

217 The MASTER. You claim in 1669 that this is admissible f
whatever it may be worth as a contention or a claim set u
that the Shipping Board is not and the Emergency Fleet Corpor
tion is the owner of these mortgages. Of course, it may not
conclusive by any means, but I think it is admissible evidence a
it is so admitted.

(Admitted. Marked "Complainant's Exhibit 7.")

Exception by defendant.

Mr. GIDDINGS. We offer in evidence the mortgage dated April
1918, from the Groton Iron Works to the United States Shippi
Board Emergency Fleet Corporation, being complainant's Exhi
A in number 1634.

(Received and marked "Exhibit 8.")

Mr. GIDDINGS. We offer in evidence a mortgage from Groton Ir
Works to the United States Shipping Board Emergency Fleet C
poration dated September 5, 1918, being plaintiff's Exhibit B
1634.

The MASTER. It is admitted and marked "Exhibit 9."

Mr. GIDDINGS. I offer in evidence a deed dated April 18, 19
executed by the United States Shipping Board Emergency Fl
Corporation to the United States, assigning to the United Sta
the mortgage Exhibit A. It is in in number 1634 as complainan
Exhibit N, and it will become our Exhibit 10 in this case.

The MASTER. It is admitted and may be marked as "Exhibit 1

Mr. GIDDINGS. I offer an assignment of the mortgage, I
218 hibit B, from the United States Shipping Board Emerge
Fleet Corporation to the United States, being complainan
Exhibit O, in number 1634, and it will become our Exhibit 11
this case.

The MASTER. Admitted.

Mr. GIDDINGS. I offer five extracts from resolutions of meeti
of the board of trustees of the United States Shipping Board Em
gency Fleet Corporation, held January 19, 1918, June 5, 1918, J

5, 1918, September 19, 1918, January 15, 1919, authorizing various officers of the Fleet Corporation to sign checks and open accounts in re the Groton contracts.

(All received and marked "Exhibit 12.")

Mr. GIDDINGS. I offer extracts from the record of the debate in Congress on the act of June 15, 1917, with particular reference to the Emergency Shipping provisions in that act. These cover remarks in the Senate May 18, 1917, remarks in the House May 28, 1917, remarks in the Senate June 13, 1917.

Objected to.

The MASTER. It seems to me that, while reference may be made to debates in Congress or in the legislature concerning the interpretation to be given to statutes passed, in this case it would appear that there seems to be some question as to the status of the parties, and at the time when this act was under discussion before the Senate, reference was made to some condition in connection with what this money should be used for, this appropriation should be ap-
219 plied to; it might be enlightening, and I can not see as it is anything detrimental to either side, and it might be beneficial as throwing light upon the subject, and I will admit it.

(Admitted. Marked "Exhibit 13.")

Mr. PARMELEE. It is understood that the evidence introduced under the fourth defense may, without further reference, be used in respect to the first.

Mr. GIDDINGS. Yes.

Mr. PARMELEE. I offer in evidence an extract from proceedings of the Emergency Fleet Corporation executive committee, dated April 29, 1920.

(Received and marked "Exhibit S.")

Mr. PARMELEE. I offer in evidence extracts from proceedings of the Emergency Fleet Corporation executive committee dated September 8, 1920.

(Received and marked "Exhibit T.")

Mr. GIDDINGS. We offer in evidence a letter dated April 17, 1920, from the United States Shipping Board Emergency Fleet Corporation, division of construction, addressed to Groton Iron Works, signed by W. M. Rice, district manager, and E. E. MacNary, district controller.

(Received as Exhibit 14.)

Mr. GIDDINGS. I introduce a report or letter from E. E. MacNary, district controller, to A. Tweedale, acting general controller, Washington, D. C., dated April 19, 1920.

(Received as Exhibit 15.)

Mr. GIDDINGS. I offer letter dated April 19, 1920, from Gr
220 ton Iron Works to M. W. Rice, district manager, and E.
MacNary, district controller, Emergency Fleet Corporation.
(Received as Exhibit 16.)
Mr. GIDDINGS. I offer a copy of a telegram received by Grot
Iron Works, April 22, 1920, signed Rice, MacNary.
(Received as Exhibit 17.)
Mr. GIDDINGS. I offer a copy of a letter dated April 21, 19
addressed to Groton Iron Works, signed by W. M. Rice, distri
manager, and E. E. MacNary, district controller.
(Received as Exhibit 18.)
Mr. GIDDINGS. I offer in evidence a memorandum addressed to t
trustees of the Emergency Fleet Corporation, re Groton Iron Wor
dated April 29, 1920, signed by Martin J. Gillen, assistant to cha
man; W. W. Nottingham, assistant counsel; R. A. Dean, gene
counsel.
Mr. PARMELEE. I have no objection to the admission of this me
orandum of April 29, 1920, signed by Martin J. Gillen and othe
provided it is coupled with the admission that the memorandum
called to the attention of Mr. Charles W. Morse.
Mr. GIDDINGS. I think that is proper.
(Received as Exhibit 19.)
Mr. GIDDINGS. I offer an extract from the minutes of the execut
committee of the board of trustees of the Emergency Fleet Corpo
tion of the meeting held April 23, 1920.
(Received as Exhibit 20.)
Mr. GIDDINGS. I offer an extract from the minutes of
221 executive committee of the board of trustees of United St
Shipping Board Emergency Fleet Corporation, also of
meeting held April 23, 1920.
(Received as Exhibit 21.)

HEARING, NO. 45 BROADWAY, NEW YORK CITY, OCTOBER 21, 1924

Appearances: For trustee, William A. Barber, Esq., Herbert
Lee, Esq., H. Starr Giddings, Esq., Thomas J. Flaherty, Esq., Ro
P. Stout, Esq.; for defendant, Henry F. Parmelee, Esq.

GEORGE J. STRONG, witness on behalf of defendant Fleet Corp
tion.

Direct examination by Mr. PARMELEE:

I am the head of the custody division of the Guaranty T
Company, New York. I was connected with Groton Iron Work
1920 as treasurer. I am familiar with the contract of March
1920, defendant's Exhibit I. When that contract was execute

was treasurer of the Groton Iron Works and for a period immediately following its execution. I recollect that this contract provided for the delivery by the Shipping Board to Groton Iron Works of a wooden steamer and certain material. It is in fact within my recollection that no delivery was ever made to Groton Iron Works of that wooden steamer and the material. I also recollect that
222 the contract provided for a credit of $500,000, which, as the contract says, "shall not be payable in money, but shall be applied after the delivery of the last vessel in the reduction of the principal sum, secured by one or the other of said mortgages as the owner may elect." The disposition of that $500,000 under the contract was a matter of dispute between us and the Emergency Fleet Corporation. The contentions between me as treasurer of Groton Iron Works and representatives of the Fleet Corporation were that at the time the officials of the Emergency Fleet Corporation notified us that the balance which they considered due under that contract had been exhausted I pointed out that in the latter part of the paragraph from which you have just been reading there is a provision that under certain conditions that money may be advanced for ship construction [reading from Exhibit I]: "Provided, however, that said sum of $500,000 shall be reduced by such sum as shall be due to the owner from the contractor by reason of the cost of the nine vessels, Nos. 1 to 9, inclusive, under contracts 57 and 225–SC, running in excess of the sum of $16,155,648, if such excess should occur." It was my contention that Groton Iron Works should receive that sum of $500,000 for use in ship construction under the circumstances as I viewed them at that time. The representatives of the Fleet Corporation took the opposite view. This contract provided likewise for an accounting. There never was such an accounting made during my time.

Q. And if you know, what was the reason why the accounting was not made?

Mr. LEE. I object to it, unless the witness has personal knowledge.

223 The SPECIAL MASTER. I will admit the question.

Mr. LEE. Note an exception.

WITNESS (continuing.) Perhaps the real reason that no accounting ever was made was largely due to my thought that there was very little to be gained from a lot of clerical people sitting down at a table to decide questions which would very often bring them into the technical realm of shipbuilding, and they would not get very far. One of the main points at issue which would determine whether or not there was a balance due the Groton Iron Works largely rested

on an interpretation of rather confusing versions of the contract under which the contractor was operating. I do not doubt but that I expressed myself to representatives of the Shipping Board that the question should be determined by a compromise or arbitration rather than by an accounting, but I have no recollection of such a statement. I know there were conferences or negotiations with a view to enabling Groton Iron Works to proceed with ship construction under this contract. I was present at such conferences, which resulted in an advance of a million dollars by the Shipping Board to the Groton Iron Works.

Q. You were familiar with the arrangement whereby the delivery of the wooden ship and bill of materials was withheld as security for such advance of a million dollars? A. I don't recall that particular phase of the negotiations or conferences.

WITNESS (continuing). As to what transpired in connection with the negotiations I have spoken of, whereby a payment of a million dollars was made by the Shipping Board to the Groton Iron
224 Works, the case of Groton Iron Works was presented to Mr. Gillen, who at that time occupied a position, I believe, as executive assistant or some such position, because at that time, in April, 1920, I believe the Fleet Corporation had applied, through its counsel in Bridgeport, for the reinstatement of the receivers, and Mr. Gillen, after going over the matter, dictated in the presence of Mr. E. A. Morse, myself, Mr. Dean, and Mr. Nottingham a recommendation to the board of trustees of the Emergency Fleet Corporation that an advance be made. I don't know what was the original suggestion that Mr. Gillen made as to the amount of that advance. I don't know much else, except that the Fleet Corporation again began to advance us money. I did know that it was up to a million dollars.

Q. Was there any connection between that advance and the nondelivery of the wooden ship and the material and the $500,000 item which was in controversy?

Mr. LEE. That I object to as improper in form, calling for a conclusion.

WITNESS (continuing). At the time of the advance of the million dollars I don't recall that I was informed that the wooden hull and other materials and the $500,000 were to be withheld. At least, if I did know, my recollection fails me. I don't recall it. At the conclusion of a conference on this subject Mr. Gillen gave Mr. Edwin Morse certain papers in my presence. As to what those papers were I am only sure of the resolution covering the Virginia Shipbuilding Corporation, or the recommendation, rather than resolution, I should say.

WILLIAM W. NOTTINGHAM, witness for defendant.

Direct examination by Mr. PARMELEE:

I reside in Washington, D. C. My present occupation is assistant unsel United States Shipping Board Emergency Fleet Corporan. I was an assistant counsel of the Shipping Board Emergency eet Corporation in March, April, and May, 1920, and have been ch ever since. I took part in negotiations subsequent to and relatg to the carrying out of the contract of March 26, 1920, Exhibit I.

Q. And did you prepare a certain memorandum on the subject the trustees of the Emergency Fleet Corporation under date of ril 29th, 1920, copy of which I hand you?

Mr. BARBER. Now, Mr. Master, this may or may not be relevant d competent, but for the purpose of preserving the record we ject to any testimony about the preparation of any memorandum bmitted by Mr. Nottingham or anybody else to the trustees of e Emergency Fleet Corporation. We just note our objection now, d we take the position that none of their interoffice memoranda ve any business in this proceeding.

The SPECIAL MASTER. The fact whether or not he prepared a emorandum or memoranda for the Fleet Corporation is merely preliminary question, I suppose.

Mr. BARBER. Yes; but I am making the preliminary objection.

The SPECIAL MASTER. I admit the question. Let it be answered s or no.

Mr. BARBER. May we have an exception?

The SPECIAL MASTER. Yes.

WITNESS (continuing). I participated in the preparation of a memorandum and signed one under date of April 29th, 20. Not to my personal knowledge was that memorandum or a py ever handed to Mr. Erwin Morse or Mr. C. W. Morse.

Q. What is your knowledge as to what was done with that memondum?—A. That memorandum was submitted to the board of ustees of the Emergency Fleet Corporation or the executive comittee; I don't know just which one or the other.

WITNESS (continuing). I was present at certain conferences atnded by Erwin Morse taking place on the 26th, 27th, and 28th, the 27th, 28th, and 29th of April. As to what was done at these nferences with reference to the execution and performance of the ntract of March 26th, Exhibit I, a telegram was received by the ipping Board from Joseph P. Cotton, as counsel for the Groton on Works, requesting that a hearing be granted the Groton Iron orks in connection with a pending receivership proceeding in the ate courts of Connecticut, and I think on the 26th or the 27th

of April Mr. Cotton, together with Mr. Erwin Morse and Mr. George J. Strong, appeared. The Fleet Corporation a few days prior to that had filed a petition in the State courts of Connecticut for the reinstatement of the receivers of the Groton Iron Works, being represented in that proceeding by Mr. Arthur N. Marsh, and I think the hearing on that came up the same day as the conference in Washington, and Mr. Marsh was advised to discontinue those proceedings pending this conference. I am not certain how that was done, whether by telegram or long-distance phone, but
227 I think word was sent to Mr. Marsh in Norwich in the Superior Court in New London County. I think Judge Banks was sitting in the case. Mr. Marsh was not at that time directed to drop the receivership proceedings, but to withhold any further action in it until further notice from the board. At these conferences Groton Iron Works then submitted their contention in connection with the contract of March 26th, maintaining that the Fleet Corporation had not advanced all of the funds which were due the Groton Iron Works under that contract, and the district controller of the Fleet Corporation and certain other employes in the Fleet Corporation presented the Fleet Corporation's contention that the entire amount of money provided for under the March 26th contract had been advanced, and I think Mr. MacNary presented the Fleet Corporation's contention on that question. There was also presented a letter from Groton Iron Works in that connection. It was the contention of Groton Iron Works at this conference that they, under the terms of the March 26th agreement, were entitled to use a certain sum of $500,000 which had been awarded to them in the contract under certain conditions as damages for the cancellation of three ships under contract 225–SC, and the Fleet Corporation took the contrary contention on that item. The question then came up as to the amount of funds necessary to complete the construction of vessels then remaining uncompleted in the yard of the Groton Iron Works, and Mr. E. A. Morse stated that they would need the sum of $600,000 to complete. Objection was taken to this figure by the Fleet Corporation, claiming that the amount would be in ex-
228 cess of that, and the amount was tentatively fixed at $900,000.

At the third conference Mr. MacNary, representing the Fleet Corporation, stated that the amount of one million dollars would be necessary to complete, and on the basis of that recommendation I concurred in the recommendation to the board of trustees of the Emergency Fleet Corporation that one million dollars be advanced to the Groton Iron Works for the purpose of completing the vessels then remaining in their yards. I prepared a draft of resolution, setting out the agreement reached at the conference. This

draft of resolution that I prepared was subsequently redrafted by Mr. Gillen, and in that form approved by Mr. Dean and submitted to the board of trustees. Pursuant to these conferences Mr. Gillen prepared a memorandum to the trustees, dated April 29, 1920, which I have referred to, and I went over it and subsequently signed it. That memorandum was dictated at one of the meetings. I am not certain as to which meeting. I think it was dictated at the second meeting and corrected as to the amount of the advance at the last meeting. I could not say who were present in the room at the time it was dictated. It is, however, a memorandum of a conference at which—the results of conferences at which representatives of Groton Iron Works were present.

Mr. PARMELEE. Pursuant to Mr. Giddings' request for the production of such memorandum, I offer this memorandum in evidence. With your honor's leave, we will read the memorandum into the minutes, rather than add it as an exhibit:

"April 29, 1920. Memorandum to the trustees of the Emergency Fleet Corporation re Groton Iron Works:

229 "We have made an application for receivership of the Groton Iron Works. On receivership being granted to us, we will be compelled to furnish the funds necessary to complete the building programme in that yard, which is now over ninety per cent complete, and which will take from us by way of an advance to the receivership approximately one million dollars.

"There exists to-day a dispute between the Groton Iron Works and our accounting department as to the audit and interpretation of the terms of the amended Groton Iron Works' contract entered into March 26, 1920. However this dispute may be settled, we will have to furnish the funds under the receivership or otherwise to complete the building programme which will cost approximately a million dollars.

"We have in the Groton Iron Works our own organization, and all funds advanced by us are advanced through the fleet's disbursing officers, so we have absolute control of the funds as they are disbursed for labor and material.

"We recommend that if the Virginia Shipbuilding Corporation with its net assets of $7,800,000 will guarantee the full performance of the contract of March 26th, 1920, that the application for a receivership be withdrawn and that we furnish the funds provided in the March 26th, 1920, contract, and thus allow all questions of dispute between the Fleet Corporation and the Groton Iron Works to be orderly adjusted upon audit.

230 "We are of the opinion that the using of the $7,800,000 of the Virginia Shipbuilding Corporation by way of guarantee

of payment of the Groton contract of March 26, 1920, more than amply protects the Emergency Fleet Corporation.

"We therefore recommend that funds be advanced through our disbursing officer to an extent not to exceed one million dollars to complete the Groton Iron Works' contract, this advancement not to prejudice any rights that either party has in the disputes that now exist. Martin J. Gillen, assistant to the chairman; W. W. Nottingham, assistant counsel; R. A. Dean, general counsel."

WITNESS (continuing). Defendant's Exhibit H is the contract I referred to as 225–SC. I can say that I have seen a resolution in purport similar to this one in the original minute book of the Virginia Shipbuilding Corporation, but I have not compared this verbatim with it.

Mr. BARBER. In order to save time, we will concede, subject to comparison, that the paper you hold is the correct copy of the minutes of a meeting of the board of directors of the Virginia Shipbuilding Corporation, held on that date. It is our position that minutes of the Virginia Shipbuilding Corporation have no relation whatever to this case and that no part of the minutes of the Virginia Shipbuilding Corporation is admissible in evidence here for any purpose.

Mr. PARMELEE. I offer in evidence the minutes of the meet-
231 ing of the board of directors of the Virginia Shipbuilding Corporation, held April 30, 1920, appearing at pages 162 to 165 of this pamphlet.

Mr. BARBER. We object on the ground that the minutes of the Virginia Shipbuilding Corporation are irrelevant and immaterial to any issue in this case.

Mr. PARMELEE. I offer it for the purpose of showing the knowledge and acquiescence of the Messrs. Morse, officers of both the Groton Company and the Virginia Company, to the purport of this memorandum which is spread at large upon the record of the minutes of the meeting indicating the presence of C. W. Morse, H. F. Morse, E. A. Morse, and others.

Mr. BARBER. We object on the ground that it is irrelevant and immaterial to any issue in this case. You can not charge the Groton Iron Works by such a circuitous route as that. It is a little too remote. Our objection is to the relevancy and materially of those minutes, not to what the minutes may show.

The SPECIAL MASTER. The claim is made, as I understand it, they bring home to the officers of Groton Iron Works the matter referred to in the memorandum which has been read a while ago concerning the advance of a million dollars. For that purpose it is admitted.

Mr. BARBER. Exception, if you please.

Mr. PARMELEE. I ask that we be given leave to submit to the master, to be marked its appropriate exhibit letter, a separate copy of the minutes of this meeting.

Mr. BARBER. Certainly.

The SPECIAL MASTER. Pages 162 to 165,

232 WITNESS (continuing). The memorandum as originally drafted contained the figure $900,000, and on the last day of the conference, on the suggestion of Mr. MacNary, the amount was increased to one million dollars, that being his estimate of what was necessary to complete the vessels. I am not certain whether the last conference was on April 30th or April 29th, but it was one of those two days. The $900,000 figure was altered to one million dollars on Mr. MacNary's suggestion as his estimate of the amount necessary to complete the vessels. Mr. MacNary was district controller for the New York district of the Emergency Fleet Corporation, construction division. Defendant's Exhibit S, the resolution of the executive committee of the Fleet Corporation, dated April 29, 1920, was not present at the conference, at which Mr. Erwin Morse was present, but the matters discussed in this resolution and other matters were discussed in the conference. This resolution was prepared subsequent to the adjournment of the conference. I prepared the original draft of this resolution. It was then redrafted by Mr. Martin J. Gillen, and then approved by Mr. R. A. Dean, the general counsel, prior to being submitted to the board of trustees. In connection with the carrying out of the March 26th contract and prior to the completion of the three 9,400-ton vessels, the million-dollar fund was exhausted, and a subsequent authorization for $200,000 was made. The letter you hand me is on the letterhead of the Virginia Shipbuilding Corporation, Alexandria, Virginia, dated September 9, 1920, addressed to Mr. Dexter Rood, Groton Iron Works, Groton, Connecticut. I know the

233 signature on that letter to be that of Mr. E. A. Morse. I am familiar with Mr. Morse's handwriting.

Mr. PARMELEE. I offer in evidence the letter I have just referred to of September 9, 1920, to Mr. Dexter Rood, signed E. A. Morse, president.

Examination by Mr. BARBER:

WITNESS (continuing). The note on the corner of this paper, Government's Exhibit 573 and a date, means it was a Government exhibit in some case. I don't know what case that is. I am not certain whether this is a paper that was taken by the Department of Justice in connection with a criminal prosecution or introduced in a civil case in Virginia. It was either a criminal case in Wash-

ington or in a civil suit in Virginia. Ths is a letter taken by the criminal department of the Government from the files of one of these companies and used in a criminal case down there.

Mr. BARBER. And then turned over here for use in this civil case. I want to show the methods they are using to get the proof they are offering here, that this paper shows up here as part of the papers seized by the Department of Justice from the Virginia Shipbuilding Corporation under criminal proceedings, and I want it to appear on the record that the United States is running a claim here, a criminal prosecution and a civil proceeding together, and using what they can get indiscriminately. That is what I want on the record, and it is a fact, too. Now, Mr. Master, I object to this.

Mr. PARMELEE. Beg your pardon. At this point counsel for
234 the defendant would not have his silence construed as assent to the statement of counsel.

Mr. BARBER. I don't construe it is an assent at all. I just stated it is an obvious fact, and it does not have to be assented to by anybody. We all know it, and the public know it. I will just object to it as immaterial and irrelevant; has no bearing on any issue here.

Mr. PARMELEE. In reply I would call your honor's attention to the fact that it indicates on its face knowledge and acquiescence by the Morses in the advance made pursuant to the March 26th contract.

Mr. LEE. I object to the statement of what the letter contains, getting it on the record that way, and move to have the statement stricken out.

The SPECIAL MASTER. Is it your claim also in this, Mr. Parmelee, that Mr. Morse, being an officer of the Virginia Company and an officer in the Groton Iron Works, that that dual position he occupied brings home whatever happened to the Groton Iron Works.

Mr. PARMELEE. Precisely, and in addition this is addressed to Mr. Dexter Rood of the Groton Iron Works, whose official capacity I will prove.

The SPECIAL MASTER. As being an officer or one in charge there?

Mr. PARMELEE. Yes.

The SPECIAL MASTER. I will let it in.

Mr. BARBER. Exception.

Mr. PARMALEE (reading letter into record). "Virginia Shipbuilding Corporation, Alexandria, Virginia. Office of the Presi-
235 dent, September 9, 1920. Mr. Dexter Rood, Groton Iron Works, Groton, Connecticut. Dear Dexter: The Shipping Board yesterday passed a resolution to pay whatever current bills are necessary to finish the two boats at the Groton yards. It was left to the New York office to say as to what was necessary. Under

the circumstances be sure and keep in with Drum and MacNary and Strong, putting through the back ship bills gradually from now on.

"Please let me hear from you as to how many we have in the office now and how many there are in the yard. Very truly yours, E. A. Morse."

Initialed "E. A. M.—R."

WITNESS (continuing). Mr. Dexter Rood, I think, at that time was assistant treasurer of the Groton Iron Works, and previous to that I think he had been treasurer at one time. The Drum referred to in the body of the letter was Fleet Corporation inspector at the yard of the Groton Iron Works. Mr. MacNary was attached to the New York division. As to the provision of the contract of March 26th relative to the delivery of a wooden ship, about April 12, 1920, Groton Iron Works, or, at least, Mr. C. W. Morse, designated a wooden vessel known as the "Columbine," and upon the arrival of that vessel at New York, the Shipping Board by wire advised arrival and asked him to inspect her, and I have the wires here. As to what transpired I don't know. I have no knowledge of the fact whether the vessel was inspected, but we subsequently received a wire from Mr. C. W. Morse. First we
236 advised Mr. C. W. Morse we would deliver the "Columbine" to him in her then condition, and received a reply to that, advising that he had been informed that the "Columbine" was in trouble and that they could not accept her until repairs had been made. Negotiations for the delivery of the vessel were suspended on or about April 30th. I am not familiar with any further suggestion made by or on behalf of Groton Iron Works for the delivery of a wooden ship, and the bill of materials as specified in the contract and from my search of the records I am unable to find any further negotiations in connection with the delivery of a wooden steamer. I was not entirely in charge of those negotiations for the delivery of stock. They conducted negotiations both with me and through Mr. D. C. Hanrahan, the head of the ship sales division.

Cross-examination by Mr. GIDDINGS:

WITNESS (continuing). I had some part in the drawing of the contract of March 26, 1920. As to who drafted the contract, Mr. McCormack and Mr. Arthur N. Marsh and myself, and I think Mr. Ben Barber sat in at some time or other on it. In drawing that contract I am not certain there was more than one conference in regard to it. I think there were several conferences. If I remember correctly, we had some conferences in New London. I think at that particular conference in New London there was no representative of Groton Iron Works present, a conference between Mr.

McCormack, Mr. Marsh, and myself. I think that was possibly a week or so before March 26 we were working on that.

WITNESS (continuing). I think the final draft of that contract was not finished until just a couple of days prior to March 26th. I think the final draft was prepared here in New York. Mr.
237 McCormack was located at that time in New York, and then it was taken up to Mr. Marsh and submitted up there, and I remember that I took the contract from New London and carried it back down to Washington for signature. I think that was done on the 26th day of March, that I made that trip. I had one of the commissioners wait after office hours to sign the contract. As far as I know, it was signed at Washington on March 26th. This is the best of my recollection on that. I remember a conference of March 29th or 30th at Washington, at which Mr. Dean, myself, and some others were present, in reference to this contract, in which the question came up as to whether it should be signed or not. The date I could not give you without refreshing my recollection. I remember and am familiar with this copy of a memorandum of the March 30th conference. I am not certain as to whether the contract was signed before or after this. It may have been signed and then held and not delivered. There was some question raised in connection with the court proceedings up there. Whether the contract was signed prior to March 30th or on March 26th I think I can verify that, because I have a telegram to one of the commissioners asking him to remain in Washington for the purpose of signing the contract. He did remain and signed it after office hours, if I remember it correctly. My recollection is I took the contract from New London after it had been approved up there by Mr. Marsh. Mr. Marsh was representing the Fleet Corporation. I took it to Washington to be signed there by one of the commissioners. This paper you handed me, which purports to be a memorandum of the conference I referred to, is not a copy of a memorandum that I submitted. I did not concur in this memorandum. You notice it is not
238 signed by me. As to its substantially setting forth the conclusions that were reached at that meeting, it speaks for itself as far as that is concerned. I did not agree with the findings of the three gentlemen who signed that. I know that there is such a memorandum.

Mr. GIDDINGS. I will offer that in evidence.

Mr. PARMELEE. I object.

Mr. GIDDINGS. If you object, we would like to have it marked for identification.

(Marked "Complainant's Exhibit 22 for Identification.")

WITNESS (continuing). I stated I did not agree with the report made by these other gentlemen as to knowing at that time that this contract was signed. I say I can not tell you absolutely. I did not know that after this contract was signed that there wouldn't be any money to finish the boats. At that time I made no personal investigation of the figures. The only figures I had were what figures were furnished to me through the New York office or through the receiver. I did, however, receive some figures from the controller's office, the New York office. As to the paper you show me which purports to be a report made by Tilden Adamson, special deputy controller to the general controller with reference to this proposed Groton contract, dated March 26, 1920, and as to its being a copy of a memorandum that we had before us at the time of this conference in Washington, I can't say that I recall having seen this. I would have to check that up. I could not tell you whether I have seen that before or not.

239 Examination by Mr. BARBER:

WITNESS (continuing). There were a series of conferences after the March 26th contract was executed, as many as three. They were held in the office of the United States Shipping Board, at 1319 F Street, in the office of Mr. Martin J. Gillen. The members of the executive committee of the board were not present. I said there were three conferences, and they resulted in a recommendation to either the board of trustees or the executive committee. Mr. Gillen was at that time, I think, a member of the board of trustes or the executive committee. Mr. E. A. Morse and these other gentlemen about whom I have testified were present in the office of Mr. Martin J. Gillen, who then had official title of assistant to the chairman. I was never present at a meeting of this executive committee—that is, at that time. There have been other times when they have had hearings, but not on that question. That memorandum, if I remember correctly, was dictated in Mr. Gillen's office. I can't say it was in the presence of Mr. Morse and the others. It passed from the secretary and from the secretary to the executive committee. No officer of Groton Iron Works ever attended the executive committee meeting when that memorandum was considered. The board of trustees and the committee at that time I think had stenographic notes made of the proceedings at their various meetings, but unless there was a request made at the time for a verbatim transcript the notes were never transcribed. The secretary kept those notes, as far as I know, in the secretary of the Fleet Corporation. I think it is a fact that there would be stenographic notes in the office of the secretary
240 of the Fleet Corporation of all conferences of the executive

committee with regard to this matter. I can't say absolutely that there would be one for every meeting, because I don't know that they took them. I didn't attend all the meetings. Stenographic notes were not made of the conferences in Mr. Gillen's office, not to my knowledge—no stenographer was present when this memorandum was dictated. A stenographer was called in from the outside, Mr. Gillen's secretary, Miss Barrett. She was in London, England, the last I heard. As to a record that would show what actually transpired at the conferences in Gillen's office, I know of no typewritten record of any notes taken at the time. The memorandum to which I have referred as having been prepared in Mr. Gillen's office is the memorandum that has been offered in evidence here and marked as an exhibit, the one signed by Mr. Gillen, Mr. Dean, and myself, not the one marked for identification.

NORMAN C. FINNINGER recalled:

Direct examination by Mr. PARMELEE:

Since the last hearing I have made a more careful examination of the books of the Fleet Corporation and the Shipping Board with respect to the manner of carrying the capital stock. I desire to amend or change my testimony with respect to the method of carrying the capital stock of the Emergency Fleet Corporation on the books. In my previous testimony it was not altogether made clear how the capital stock was carried on the Emergency Fleet Corporation books, and I have made a further detailed examination in the early books of the Emergency Fleet Corporation and have
241 made photostat copies of the vouchers, checks, and entries appearing on the Emergency Fleet Corporation books. The United States Shipping Board shows a requisition for the money from the United States Treasury, sample copy attached. No. 5, warrant, which states that $500,000 is withdrawn from the Treasury of the United States Government for a perm nent fund, and check No. 25,757 for $500,000 is made payable to William L. Soleau, assistant disbursing officer, United States Shipping Board, for $500,000. This money was deposited by the United States Shipping Board and withdrawn on vouchers, photostat of copy 109 attached hereto, which states five thousand shares of capital stock of the United States Shipping Board Emergency Fleet Corporation at a hundred dollars a share. The voucher was properly approved, and check was drawn on the Treasury of the United States, paying over the $500,000 to the United States Shipping Board Emergency Fleet Corporation. The entries appearing on the United States Shipping Board books are as follows:

When the requisition is made, there is a debit to unexpended appropriations subsidiary account permanent funds. The credit is permanent fund by act of Congress, September 7, 1916. When the cash is received from the United States Treasury, the entry is debit general cash subsidiary account permanent fund and credit unexpended appropriations. When the money is forwarded or disbursed to the United States Shipping Board Emergency Fleet Corporation, the entry is debit permanent fund appropriation expenditures, discharge of appropriation funds to the Emergency Fleet Corporation (A, capital stock). The corresponding credit is general cash
242 subsidiary account permanent fund. When the cash is received by the United States Shipping Board Emergency Fleet Corporation, the entry is debit cash subsidiary bank in which the money is deposited and credit capital stock. That was the course of procedure during the sale of the entire capital stock of the Fleet Corporation. Eventually the capital stock account was transferred to the Fleet Corporation control account. That wiped out the capital stock account on the books of the Fleet Corporation. That was done in March 20, 1920, the journal entry reading: "To close out capital stock and appropriation accounts and set up a control account for the total amount of moneys received from United States Treasury for the sale of capital stock and for the withdrawal from appropriations. Mr. Giddings at the last meeting at which I testified, asked me relative to the second appropriation of June 15, 1917, and asked how that money was expended and withdrawn from the United States Treasury. I have a copy of a warrant issued on the Treasury of the United States, dated December 6, 1917, and January 21, 1918. The warrant was made up by the United States Shipping Board withdrawing on December 6, 1917, ten warrants for a million dollars each, and on January 21, 1918, a warrant for five million dollars. The warrant states that the money should be paid to the United States Shipping Board Emergency Fleet Corporation, care of R. B. Stevens, treasurer, room 901, United States Shipping Board Building, 1319 F Street, Northwest, Washington, D. C. The money was disbursed by the Treasurer of the United States direct to the
243 United States Shipping Board Emergency Fleet Corporation and did not pass through the books of the United States Shipping Board. The United States Shipping Board would take up such entries on their books by a journal entry, crediting the proper appropriation account and debiting the United States Shipping Board Emergency Fleet Corporation construction account as named in the appropriation bill or authority by Congress.

Mr. PARMELEE. I offer in evidence photostat copy of check No. 35757 on the Treasury of the United States, payable to William L.

Soleau, assistant disbursing officer, United States Shipping Board, to which are attached a warrant No. 5, dated April 24, 1917, and a public voucher No. 215, checks Nos. 256, 257, and 258, all dated May 8, 1917, payable to Fleet Corporation, and I ask that the papers collectively be marked as a single exhibit.

(Received in evidence and marked "Defendant's Exhibit U.")

Mr. PARMELEE. I offer in evidence the photostat copy of a document entitled "Notice of Settlement, Treasury Department," dated January 21, 1918, to the Emergency Fleet Corporation, to which is attached a certificate on miscellaneous settlements and claims, No. 13977, dated December 6, 1917, and ask that these papers be marked as a single exhibit.

(Received in evidence and marked "Defendant's Exhibit V.")

Cross-examination by Mr. GIDDINGS:

WITNESS (continuing). I have made an examination to see how and when the fifty million dollars capital stock was paid by the Shipping Board to the Fleet Corporation. The United States
244 Shipping Board paid the fifty million dollars from May 8, 1917, to November 16, 1917, on checks reading from 256, numbering up to 3260, voucher numbers covering from 109 to 1705, not consecutively, but that is the general run of the numbers. The last three vouchers (1) November 2nd, numbered 1590, was for five millions; (2) November 14, voucher No. 1690, was for three million, and (3) November 16th, voucher number 1705, was for two million. These are photostatic copies of the vouchers that I referred to.

Mr. GIDDINGS. I will offer those three in evidence.

(Received in evidence as complainant's Exhibit No. 23.)

WITNESS (continuing). In regard to the commitments made by the Fleet Corporation prior to the passage of the act of June 15, 1917, and whether there were any other commitments in addition to the $76,000,000 that you referred to, I did not make any further investigation of that. I did not get any information regarding the other commitments at that time in the Fleet Corporation books, as filed, because they did not record their commitments at that time, and many of the contracts you have already asked me about which were under negotiations at that time there isn't any record to show just how far they were under negotiations. As to where I got that information I gave you the other day, taking the first fourteen contracts—the Noank contract was No. 15. I took the contracts which had been negotiated prior to No. 15, which was 1 to 14, prior to the
245 date of the Noank contract, June 15, 1917, and added the amount of money involved up, and it amounted to the statement which I have testified to in this case. I do not know whether many contracts were made between the date of the contract

3 WH and July 11, 1917. As to any one of the first thirteen contracts that were made lasting longer than July 11th, that is the seventeen payments under them, from general knowledge I would say yes. I don't know. When payments were made to the contractors under those contracts, there was not any distinction made on the books of the Fleet Corporation between payments out of the first fifty million dollars and payments out of the subsequent appropriations. From my general knowledge I would say some of the payments to the contractors—those first thirteen or fourteen contracts—ran along into 1918. During the same time the Fleet Corporation would be making payments to contractors under contracts made subsequent to July 11th, 1917. So far as the entries on their books are concerned there would be absolutely no difference as to where the money came from in the way in which those payments would be recorded.

Redirect examination by Mr. PARMELEE:

WITNESS (continuing). As to whether or not the value of the completed vessels was carried in the assets of the Fleet Corporation when the vessels were completed—when the vessel was completed, it was not carried—it was transferred to the United States Shipping Board. The records of the Emergency Fleet Corporation show that when a vessel was completed and delivered the account was made up of the cost of the vessel in detail and transferred to the United States Shipping Board records, and title or the assessed
246 value carried on the United States Shipping Board books.

All moneys that were received by the Emergency Fleet Corporation Construction division constituted the construction fund of the Fleet Corporation. It included the sums paid for capital stock. They were all lumped together, all moneys that went into construction, and carried in the construction fund, whatever their origin may have been. The construction fund did not go into the construction of ships exclusively. It also went into plant construction, financing agreements, sometimes housing—whatever was necessary for the actual construction of vessels. Moneys expended for plant construction were expended on plants owned by strangers in most cases. The title to those plants remained in the owners of the shipyards in most cases. And, as I have stated, the ships, when constructed, were not capital assets of the Emergency Fleet Corporation.

Mr. GIDDINGS. I don't think he stated that. He said didn't know.

WITNESS (continuing). Ships were not carried as capital assets of the Emergency Fleet Corporation.

Recross-examination by Mr. GIDDINGS:

WITNESS (continuing). When the ship was completed by the contractor I don't know to whom it was delivered. The general pro-

cedure of delivering a vessel would be that there were certain representatives, and the acceptance board of the contractors' yard would accept a vessel, and general papers were made out which would be filed with the district representative of the United States Ship-
247 ping Board Emergency Fleet Corporation, and those documents would in turn be sent on to Washington and put through the formal procedure, which procedure I don't know in detail, but you would find those records in Washington in one of our Government offices. There is no construction division of the United States Shipping Board. The only construction division existing to my knowledge is of the United States Ship'ing Board Emergency Fleet Corporation. I would not say that board would be the only place which would have records of deliveries and receipts, because, when that document was made out, it was made out in detail and was the basis of the United States Shipping Board Emergency Fleet Corporation transferring the entire cost of the ship over to the United States Shipping Board. It was a procedure of the accounting division upon the completion of the vessel to deliver it over to the United States Shipping Board, and we considered, as far as the accounting was concerned, our part of the work finished and completed, as we had given value for the money we had received under appropriations or from the Shipping Board. These advances to private shipyards were shown on the books of the Fleet Corporation according to what it was advanced for. If it was advanced for a plant, it might show up as plant construction. If it was set up for a mortgage, it would be mortgages, mortgages receivable, but most of the time—that is just one or two recollections—it is awful hard to tell. It would show mostly up as advances to contractors. For instance, in the Groton case, it would show up as advances to the Groton Iron Works. Then you would have to go to the de-
248 tailed subledger of the district to find out for what specific purpose it was advanced. When the Fleet Corporation got moneys from the Shipping Board out of the second appropriations, not the fifty million dollars but the other appropriation, that was merely charged to the Shipping Board or credited to the Shipping Board on the books. When a ship was completed and turned over to the Shipping Board, a counter entry was made. In relation to the 150 million dollars, the first entry that was set up was a debit to cash when the cash was received, and a credit to appropriation account, specifically showing $150,000,000 received under act of June 15th for construction. Those entries were carried on the books in that fashion up to about March, and at March, when we started to document the data back to the Shipping Board, it was put in as E. F. C. control would be the credit entry. That was March of 1920.

as to how it was done prior to that I am a little hazy. I would have to get specific entries. I know more about it after the latter part of 1920 and '21 and '22. The control is credited in that case, after that, March, 1920. In other words, the Shipping Board would get the charge and the E. F. C. control would be credited. Prior to that date, why, a detailed inspection would have to be made. I can't tell if the Fleet Corporation owned any plant itself offhand; I can't remember. I was just trying to think of Hog Island and a few others that were cost plus where we put in all the money. I don't know just how we showed that up on the records at present without looking it up.

Egbert E. MacNary, witness for defendant Fleet Corporation.

Direct examination by Mr. Parmelee:

My occupation is passenger traffic manager United States Lines. In March and April, 1920, I was district controller in the New York district for the Fleet Corporation. As such I did take part in negotiations with Groton Iron Works in the matters following the contract of March 26th, 1920. I was in conference with Mr. Erwin Morse, president of Groton Iron Works. As I recall, at one of the conferences held in Washington, in Mr. Gillen's office, the question raised was who was going to finance the bills of the contractor. We had served notice on Groton Iron Works that an excess of the contract price for the steel ships at the Groton Iron Works had been paid by the New York office, and the Groton Iron Works had asked for additional funds, stating that they were unable to finance the contract. I recall that Mr. Erwin Morse was present at this conference, stating that he would require about six hundred thousand dollars to complete the contract, and I stated that he would need not less than a million dollars to complete the contract. The result of this conference was that a resolution was passed by the Shipping Board approving the payment of construction costs up to a million dollars, and in consideration of that, as I recall it, certain credits and certain materials and equipment that were provided for in the March 26th contract were withheld in lieu of the million dollars. That was approved at that time. As I recall the conference, which was conducted by Mr. Gillen, when it was finally decided to recommend to the board that a million dollars be paid over, Mr. Gillen stated at that time "We can't give you these other things," referring to the ship hull, bill of material, and this credit of five hundred thousand dollars. That condition was accepted by Mr. Morse:

Mr. BARBER. I object to that and move to strike that out.

Mr. PARMELEE. I claim in the vernacular it is perfectly apparent what he means.

The SPECIAL MASTER. I think the discussion there, what Mr. Morse did, what he said, is the best evidence of proclaiming how he was binding the corporation. What was said there, let us have that.

WITNESS (continuing). As I recall the things that happened at that time, Mr. Morse was exceedingly anxious to get some money to go on and complete the ships.

Mr. BARBER. I move to strike that out.

The SPECIAL MASTER. Don't characterize the attitude of the people there. Just go on and say what took place, what was said?

The WITNESS. I am not sure I am clear on just what you mean.

The SPECIAL MASTER. You said he was exceedingly anxious. That is expressing an opinion.

WITNESS (continuing). Mr. Morse asked for the money that he stated would be sufficient to complete the ships. He asked for $600,000. I said it is not enough, you need a million dollars. I don't think Mr. Morse answered that immediately. I think Mr. Gillen spoke up and said, "You rather scare me when you say a million dollars," and I told Mr. Gillen that the ships could
251 not be completed for less. I am not sure that I can quote Mr. Morse on his direct answers. It is three or four years ago. As I recall, Mr. Morse's statement was to the effect that he would be very glad to get the million dollars.

Q. And what was said with respect to the—by Mr. Morse with respect to withholding the delivery of the wooden steamer and the material?

Mr. BARBER. I object. This is plainly an effort to vary the terms of a written contract by some sort of parole agreement afterwards.

The SPECIAL MASTER. The resolution has already been testified to by Mr. Nottingham.

Mr. LEE. It was a preliminary negotiation. A great many things were probably said until the minds met and a resolution or memorandum was drawn up between the parties, as Mr. Nottingham testified to, and put in writing.

The SPECIAL MASTER. What was said there at that time the witness is now endeavoring to relate, as I understand it. I will admit the testimony.

Mr. FLAHERTY. What was finally concluded, was put in a resolution and sent to Virginia by the Fleet Corporation, or at least the trustees, and that over our objection has been put in evidence. Now that is the report to their own principals, the trustees, and that is what is used by the Virginia corporation, and that is the only thing

that has been produced to bind Mr. Morse, because he was an officer of both corporations. I submit it was all put in writing in that resolution which was adopted by the Virginia corporation, and they can not now vary it.

252 Mr. PARMELEE. The resolution was not a written contract signed by the Groton Iron Works.

The SPECIAL MASTER. The testimony is Mr. Morse was one of the officers of the Groton Iron Works, and these statements have been made to him at a conference in which he took part at that time. Subsequently this document was drawn up which Mr. Nottingham has testified to. I think this evidence is admissible.

Mr. FLAHERTY. We have an exception.

WITNESS (continuing). As I recall the circumstances, he simply nodded and assented to Mr. Gillen's statement. I can't recall that anything further was said by Mr. Morse, beyond his nodding his assent to the withholding of the wooden steamer and the material. Any request by Mr. Morse or anyone representing Groton Iron Works for the delivery of the wooden ship and the material would not come to the district controller. No such request was made of me. I recollect that the contract of March 26th contained a provision that there should be an accounting between Groton Iron Works and the Fleet Corporation on the construction contracts, and I recall a reference to the wooden ship contract in the Noank yard, where there was a reconciliation that was to be made. That reconciliation was in fact made; there were repeated attempts to get together with the Groton Iron Works. It was not completed. I did have a communication with representatives of the Groton Iron Works with reference to that accounting or reconciliation. The reconciliation had been in process for quite a while with the receivers prior to the lifting of receivership in that March 26th agreement. There were five points, as I remember it, remaining

253 to be completed, but those five points never were taken up afterwards, owing to the fact that we did not get together with Groton Iron Works, except at this meeting in Mr. Gillen's office in Washington, and point by point these questions were brought up and presented to Mr. Gillen, and there was no agreement between the point of view of Groton Iron Works and ourselves. We had made a number of attempts to get together with Groton Iron Works, but there was always some question came up—some difficulty in the way of getting together. I might say that our negotiations were principally with Mr. Strong, representing Groton Iron Works. As to Mr. Strong at any time suggesting to me that the matter should be settled by arbitration or by compromise, he made a statement of that sort when we were in Washington. We were always ready and

so expressed ourselves to Groton Iron Works to proceed with that accounting and reconciliation.

Mr. LEE. I object to that as calling for a conclusion.

The SPECIAL MASTER. The witness has already told of the efforts to get together on this matter.

Mr. PARMELEE. The question was merely a summation. It is not overimportant, but I assume it to be admissible.

Cross-examination by Mr. GIDDINGS:

The date of this conference in Mr. Gillen's office in Washington would probably be the last of April or early part of May of 1920, as I recall it, shortly after the new contract had been in effect. This memorandum, dated April 29, in evidence, is one of the
254 memorandums, but I have in mind there was another one. We were in Washington two or three days. I think there were three conferences. I know that Mr. Gillen conducted the conference, and Mr. Morse was present at one, Mr. Erwin Morse at one of them, and I am not sure whether all three of them. I know at one of them Mr. Cotton was there, Mr. Nottingham, Mr. Strongg, Mr. McCormack was there, and myself. That is all I recollect at the present time. I am not sure that Mr. Dean sat in the conference. He was in Washington. He was in the building at the time, because I remember talking to him. I am not sure whether he sat in there. He didn't sit in all the conferences, I know that. These conferences were on or about April 26th to 29th. This was the time, around April 29th, I recognize by Nottingham's memorandum here. When I served this notice that I spoke of that Groton had exceeded the contract price a letter was written to Groton Iron Works. Complainant's Exhibit 14 is the letter that I refer to. The date of that is April 17th. The letter was written about that date. In that letter of April 17th to which you referred I stated that the records of the Fleet Corporation showed that there had already been paid and debited to Groton Iron Works on account of the March 26th contract a total amount in excess of $16,155,648. This letter was based on the total of the vouchers, payments made against this contract, less credits of materials that had been taken away, as I recall it. I do not recall now a report made by Tilden Adamson to the general controller about March 29th, 1920, with reference to the payments made under this contract. I am not familiar with this report you show me. As to this statement you show me, of the
255 Walsh investigating committee, I don't question that I did present it, but I have no recollection of it now. I told Mr. Gillen and the others present at the conference that boats could not be finished for $600,000; that it would take near a million. As to whether there had been any change in the figures between the date

of signing the March 26th contract and the date of this conference, or whether the same thing was true at the time the contract was signed, I say payments were being continually made. After we signed the March 26th contract, as to how many payments were made between then and the time we stopped the payments in April—April 17th—that could be only answered by referring to the vouchers. We were paying weekly pay rolls and material bills as we went along. I would not be able to say offhand, without taking considerable time, whether this memorandum shows this. I notice the item here, undistributed advances, April, 1920, supplementary agreement payment $250,000, pay roll $101,606.10; assuming that those figures are correct, this would not be the complete payments that were made, I mean after the date of the contract up to April 19th; as I recall, there were two pay rolls there of $101,000. The March 26th contract specified a new basic price per ton on the two contracts. After advancing the two weeks' pay rolls, I did not notify Groton Iron Works they had already received the full contract price. We were paying material bills as well as pay rolls. Contract was made on March 26th, and I sent this notice as indicated in that letter you have of April 17th, at which time we had exceeded the contract price. It would not be possible to tell if there is any entry on this statement in regard to the material bills paid during April
256 without going over the vouchers that support these items. You have undistributed advances there in quite a large amount. A statement like this would not answer that question. The statement was prepared in my office by myself. I am responsible for it.

Mr. GIDDINGS. I would like to have a copy of it marked for identification.

(Marked "Complainant's Exhibit 24 for Identification.")

WITNESS (continuing). Your question that if it would involve $1,350,000 in March to complete the vessels, and we had spent $350,000 already, then that left a million still to go at the date of our conference in Washington; I would not say that was the basis of my arriving at the million dollars. It was based on estimates that were made by the construction department, made, as I recall, at the time of the conference.

By Mr. GIDDINGS:

Q. Didn't you have estimates made at the time you made this contract of March 26th as to what it would cost to finish the boats?—A. I don't know what was done when that contract was made as far as estimates were concerned. I didn't have to do with the making of that contract.

Q. But at the time of the conference at the end of April the engineers or someone, made estimates that it would cost a million dollars to complete, is that right?—A. Yes, sir.

WITNESS (continuing). I don't know who did represent our department in advising in regard to making the March 26th contract.

That was all done in Washington. I don't recall that our
257 department was consulted at all about the figures. As to going up to New London some time prior to the execution of the March 26th contract, and having a conference there in regard to it on the lifting of the receivership, I had numerous trips to the Groton Iron Works' plant. I don't recall that I was consulted about the question of lifting the receivership. As to my testimony before the Walsh committee, at page 86 here—that was a memorandum I made to Mr. Adamson, who was in the controller's department. That had nothing to do with this—nothing to do with those who were carrying on the negotiations of this March 26th contract. Glancing over a few pages further, and as to remembering now on reading this testimony that I went to New London and had a memorandum March 18th in reference to how near completed the vessels were, I remember going up to Groton Iron Works, but I had no negotiations with the Morse people about this thing.

By Mr. GIDDINGS:

Q. That isn't what I'm asking you. I am asking you whether you did not know at that time about how much it would cost to complete these vessels, at the time that the March 26th contract was signed, on or before March 26th?—A. I would say that we always had an estimate on hand of what it was going to cost to complete. On or about April 29th I told the conference at Washington it would cost them a million dollars. As to this being my estimate to complete—at the time this contract was signed, March 26th, I don't know whether there is a record showing that at the present time. I would not give it to you from memory, because I couldn't. As to whether there was any substantial change in conditions or in my figures or anything of the kind, or were they
258 the same, subject to the necessary modification of cost by payments during the interval, I would say they would be practically constant with the figures, allowing for the work that had been done and expenditures made. If on April 29th the estimated cost of completing the vessels was a million dollars, it certainly was at least a million dollars on March 26th; I would say it would not be less than that, surely. That was based on reports made to me then by my own engineers.

JOSEPH MCCORMACK, witness for complainant.

Direct examination by Mr. BARBER:

I reside at Erie, Pennsylvania. I am assistant counsel for the Shipping Board. As to whether I mean the Shipping Board or Fleet Corporation, my understanding is that it is the Shipping Board; that in a recent rearrangement of the organization the Shipping Board retained control of the lawyers. The pay checks are on the Treasury of the United States. I don't know, but I think they are drawn by the Fleet Corporation. I have been with the Fleet Corporation about five and one-half years. I had to do with the preparation of the contract of March 26th, 1920. I had to do with the negotiations that led up to the making of that contract—some of them. The negotiations began which resulted in the March 26th contract, I should say along about September or October, 1919, as I know the facts about that negotiation. Receivers were appointed for Groton Iron Works by the Superior Court of Connecticut in March, 1919, and application was made two or three times by the Morse interests to have the receivers either changed or
259 to have the receivership lifted, and Mr. C. W. Morse and a number of others came to Washington on a number of occasions, especially after the 20th of September, 1919, and had discussions with Mr. Scott and Mr. Nottingham and others with reference to a possible arrangement by which Groton Iron Works would be permitted to resume possession of the physical assets of the Groton Iron Works, then in the hands of the receivers, and requests were made to the home office of the Fleet Corporation in Philadelphia for information from the construction department, from the law department, and from the controller's department. That information was furnished, generally speaking, to Mr. Nottingham, and on one occasion— I think it was in October, 1919—a Mr. John J. Eason, an engineer in the construction department at Philadelphia, and myself, were summoned to Washington to a meeting of the Shipping Board, to discuss a proposition which Morse had submitted for the taking over of the yard under a contract—under a new contract with the Fleet Corporation—and after a day of discussion it was decided to reject the proposition which was made by Morse, but some time after that Mr. Nottingham called me on the phone and asked me to draft an agreement, somewhat after the form of an agreement which had just been executed between the Fleet Corporation and the Atlantic Corporation, and to send it down to him. I believe I went down from Philadelphia to Washington two or three times after that, and finally, after some changes in Washington, a contract was entered into under date of—I think

it was December 20th, 1919—between the United States Steamship Company and the Fleet Corporation. The paper you hand me is a copy of the contract of December 20th, 1919, to which I have just referred.

260 Mr. BARBER. Would you mark it for identification?

(Marked "Complainant's Exhibit 25 for Identification.")

WITNESS (continuing). That contract provided that Groton Iron Works should join in its execution after the receivership had been lifted, but on account of the fact that the United States Steamship Company or the Morse interests did not bring about some of the prerequisite conditions through the lifting of the receivership Groton Iron Works never signed the contract and it never went into effect, but the negotiations continued, and some time in the latter part of March Mr. Nottingham and I and Arthur Marsh of Bridgeport, Connecticut, went to New London to a hearing in the Superior Court, and at that hearing Mr. Marsh read a letter from T. A. Scott, a commissioner of the Shipping Board, stating that on certain conditions the Shipping Board would—or the Fleet Corporation would—be willing to see the receivership lifted and a new contract entered into with Groton Iron Works, and there were a great many of the creditors of Groton Iron Works present, and it was represented to them by Mr. E. Blodgett, of Boston, and Mr. C. W. Morse and others that it would be to their interests to have the receivership lifted and a new contract entered into along the terms outlined by Mr. Scott with the Emergency Fleet Corporation.

After the hearing was over, Mr. Marsh, Mr. Nottingham, and myself prepared the first two articles I think of the contract of March 26th, 1920, as it stands at the present time, and we

261 agreed to meet the next day in New York, Mr. E. Blodgett, of Boston, and Mr. George Burditt, of New York, who was at that time counsel for the United States Steamship Company, and some of the other Morse interests, I think, and we did meet them in the Fleet Corporation's office at 139 Center Street, and we discussed the terms of the contract back and forth all day, Mr. Nottingham and Mr. Marsh and myself representing the Fleet Corporation and Mr. Burditt and Mr. Blodgett the Morse interests. After that conference Mr. Nottingham went to Washington, and Mr. Marsh went to Bridgeport, and as it had been agreed upon I drew up practically a final draft of the contract of March 26th, 1920, and put it in the mail, I believe that night, rather late, and sent it to Mr. Nottingham. After I had mailed it to him I read the copy over two or three times and noticed a place where I thought one word should be inserted, and I called him on the phone the next morning and asked him to insert it, and it was inserted, and a day

or so later when I was in Washington the contract was signed, I think by Commissioner Stevens, late in the afternoon. The contract was taken up to New London to a hearing in the Superior Court on April 3rd, 1920, and it was used up there with some other papers in lifting the receivership and going through a number of other steps connected with it. Of course the Morses signed it, but I don't know just when with reference to the signing by Commissioner Stevens. I couldn't say whether it had been signed by the Groton Iron Works before the 3rd of April, when we were using it in court. I didn't have the contract in my hands after it left New York on the night I mailed it to Mr. Nottingham until after
262 April 3rd. I do not know when it was actually delivered to Groton Iron Works. I don't know now when the execution was actually completed. I think I could place within a day or two its signing by Mr. Stevens, but not by Groton Iron Works. I am familiar with part of the negotiation that was had the latter part of April in Washington and about which Mr. Nottingham has testified to-day. My part was this: I arrived in Washington on the morning of April 27th, Tuesday, after having been in Bridgeport, Connecticut, on Monday with Mr. MacNary and Mr. Arthur M. Marsh in connection with an application for the reinstatement of the receivers in the State court. A hearing was held in Mr. Gillen's office on the afternoon of Tuesday the 27th and Wednesday the 28th. I was present at both of those hearings, and there were some discussions between Mr. Erwin Morse, Mr. MacNary, Mr. Nottingham, myself, and possibly Mr. Strong, at other times during those two days. Mr. MacNary and myself left Washington on the night of April 28th and came back to New York. There were present at those conferences in Mr. Gillen's office Mr. Gillen, Mr. Joseph Cotton, Mr. George Strong, Mr. MacNary, Mr. Overend, district controller of the Fleet Corporation for the Baltimore district; Mr. Nottingham, myself, and Mr. Dean was in for a time at one of the conferences. I really can not say anything about the circumstances under which it was dictated, because I was not present myself. I have seen it a number of times, of course, copies of it. The Gillen memorandum of April 29, 1920, in evidence I have every reason to believe was dictated in Washington in Mr. Gillen's office. That is my information. I don't think it was dictated when Mr.
263 Morse, Mr. McNary, Mr. Nottingham, and I were in these conferences in Mr. Gillen's office. I could not say if it was dictated subsequently. I might say that the reason Mr. MacNary and I went to Washington on the night of April 26th was that after reaching New York from Bridgeport we called Mr. Dean, general counsel of the Shipping Board at his home, and he re-

quested us to come down, saying that Mr. Gillen had just that d returned from a trip and that he had been looking into this Grot situation with the idea perhaps of entering into a new arrangeme with them, and it is possible that it may have been dictated on Mo day, but I don't think it was dictated on Tuesday or Wednesda certainly not in my presence. I don't think I left the conferen room at any time. I might have, of course. I don't think the me orandum was read in the conference while I was there. The confe ence adjourned—the last one about a quarter to six the night April 28th. Both Mr. MacNary and I came back to New York th night. And down to the time I left I had not seen this memorandu or heard of it It bears date the 29th. The conference at which I w present ended on the 28th. I don't know whether there was a further conference the next day. In my draft of the March 26 1920, contract, I provided for a basic figure of $199.16 per dea weight ton. I remember that. I got these figures both from M Nottingham verbally and from, I think, Mr. Scott's letter, which w read in court, to the creditors and others. Those were the figures apply to contract 57-SC and 225-SC; $199.16 was to represent t contract price for the ships on one of those two contracts, No. 57-S and I think the price for the ships on the other contract, N
264 225-SC, was $200 even. Those are the same figures that used in the December 20th, 1919, contract—the $199.16 is, think. I am not sure as to the $200. It appears from the contra of December 20th, 1919, that they are. I had those figures then December, 1919. They were not exactly based on figures that h been furnished to me by the auditing department. As to where did get them from, in September or October, 1919, Mr. John Eason, an employee of the ship construction division of the Fle Corporation, was instructed to make estimates as to the cost complete the vessels at Groton, and he went to New London a came back and made his estimates. Of course in making estimat he used figures which had been furnished to him by our controlle division on advances which had already been made, and the $199.1 as I recall it, represents his figures of his estimated cost to comple the vessel—that is, the cost of completion—and his figures of co at completion of the vessels on the other contract was somewhe around $192, and in the negotiations between Mr. Nottingham, M Scott, and the Morses it was felt that a few dollars per ton oug to be added to Mr. Eason's estimated cost to complete the vesse under 225-SC, but the other vessels—the vessels under 57-SC—bei much further along towards completion, it was decided to leave th figure as he had made it. He made and furnished those figures pri to December 20th, 1919. I don't have a copy of the letter fro

Commissioner Scott which was read to the creditors of Groton Iron Works at the meeting about March 17th. It is my recollection that it was addressed to Arthur N. Marsh, so that I believe he would have the original, but copies should be in the general files of the Shipping Board and in the possession of the legal division files.

265 HEARING: FRIDAY, OCTOBER 24, 1924, OFFICE OF THE SPECIAL MASTER, NO. 185 CHURCH STREET, NEW HAVEN, CONNECTICUT

Mr. PARMELEE. Pursuant to leave granted at the last hearing, I offer copy of minutes of the meeting of the board of directors of the Virginia Ship Building Corporation, held April 30, 1920, in lieu of the original minutes presented at the last hearing.

(Received and marked "Exhibit W.")

Mr. PARMELEE. In response to requests by counsel for the complainant for memoranda relative to conferences held at which Mr. Morse or representatives of the Groton Iron Works were present, I produce the minutes of a hearing before the United States Shipping Board, held in Washington on March 30, 1920, at which Mr. Morse was present, supported by affidavit of the official reporter for the United States Shipping Board. I offer these minutes in evidence as Exhibit X.

(Received.)

Mr. PARMELEE. In response to a request from Mr. Giddings, I produce a copy of a letter dated March 16, 1920, from T. A. Scott, commissioner of the Shipping Board, to Mr. Arthur M. Marsh.

Mr. GIDDINGS. This being the letter referred to by Mr. McCormack in his testimony at the last hearing, I ask to have it marked "Complainant's Exhibit 26."

(Received in evidence.)

Mr. GIDDINGS. I offer in evidence the certified copy of resolutions of the Fleet Corporation held at a meeting April
266 23, 1920, having been previously marked as "Complainant's Exhibit 21 for Identification."

(Received as Exhibit 21.)

Mr. GIDDINGS. I offer in evidence copy of a memorandum signed by Messrs. Dean, Abadie & Weaver, dated March 30, 1920, entitled "Re Proposed Contract With Groton Iron Works," as prepared under date of March 26, 1920, which has already been marked as "Exhibit 22 for Identification."

Mr. PARMELEE. It is objected to as irrelevant, incompetent, and immaterial.

(Admitted as Exhibit 22.)

Exception by defendant.

Mr. GIDDINGS. I offer in evidence a paper marked "Groton Iron Works, financial statement of expenditures on contract 57-SC and 225-SC as of April 28, 1920," which has heretofore been marked "Exhibit 24 for Identification"; Mr. McNary said it was made in his office.

(Received and marked "Exhibit 24.")

Mr. GIDDINGS. I offer in evidence an agreement dated December 20, 1919, between the United States Steamship Company and the United States Shipping Board Emergency Fleet Corporation which has been heretofore marked "Exhibit 25 for Identification." It is that contract that Mr. McCormack identified.

(Received and marked "Exhibit 25.")

Mr. GIDDINGS. I offer extracts from the minutes of the meeting of the board of trustees of the United States Shipping Board Emergency Fleet Corporation held March 12, 1920.

(Received, complainant's Exhibit 27.)

267 Mr. GIDDINGS. I offer a copy of a resolution adopted at a meeting of the trustees of the Emergency Fleet Corporation held April 2, 1920.

Mr. PARMELEE. It is conceded, I assume, that the payment of two hundred and fifty thousand dollars ($250,000) was actually made.

Mr. GIDDINGS. Yes.

(Received as Exhibit 28.)

Mr. GIDDINGS. I offer in evidence a copy of the report made by Tilden Adamson, special deputy general comptroller, to the general comptroller of the United States Shipping Board Emergency Fleet Corporation, re proposed contract with Groton Iron Works as prepared under date of March 26, 1920, the date of this report being March 29, 1920.

(Admitted as Exhibit 29.)

Exception by defendant.

WILLIAM Z. WHITE, recalled.

Direct examination by Mr. STOUT:

I was employed by the receivers from April 21, 1919, until the time of their discharge about April, 1921.

Mr. PARMELEE. Wasn't it 1920 they were discharged?

WITNESS (continuing). No. Morse took over the assets of the yard in 1920, but the receivers were still retained to pay the 20

dividends and notes, and so forth, and they were not finally

268 discharged until April, 1921. I acted as comptroller for the receivers during their active management of the yard, and after possession of the yard was returned to Groton Iron Works still represented the receivers in taking care of the distribution

the dividend checks to the creditors, also the 80% notes and any other items which might affect the receivership. As to my other duties and this contract, I was also a special representative of the Fleet Corporation at the yard of Groton Iron Works from April 8, 1920, until about October 1, 1920, and in that capacity I approved of vouchers, took care of the accounting end of the Fleet Corporation at Groton Iron Works. The receivers were Frederick Conlin and P. Leroy Harwood. Prior to the receivership, I know of my own knowledge or experience as an employee of Groton Iron Works that Mr. Conlin in 1919 was district manager of the Fleet Corporation in charge of construction in the Boston district; he held that position until shortly after the first of the year of 1919, and then he became assistant, when the Boston district was dissolved, to Basil Magor, who was district manager in charge of construction in the New York district, the Boston district being eliminated. The Groton Iron Works under their steel contracts originally reported to the Boston district, whereas in the wood contracts at the Noank yard they were under the New York district. There is no question of my knowledge of Mr. Conlin. I dealt with him in my capacity when working for Groton Iron Works. During the time that I acted as comptroller for the receivers, to my knowledge, the officers of Groton Iron Works had no control over the operations of the plant. As to their having any access to
269 the books of accounts, the records of the advances, and costs of construction of the vessels as carried on by the receivers, there were reports sent to the New York office of the Groton Iron Works from the time of the appointment of the permanent receivers in April, 1919, for a period, as I remember, of about one or two months; we sent them progress reports, but shortly after that all reports were entirely discontinued and there was no connection at all between the receivers and Groton Iron Works officials during the term of the receivership. The receivers did not allow them any access to the records and books at the plant. The first contracts provided payments that were originally made on the basis of progress payments on the ships. Progress payments continued, the actual cash was advanced on progress payments from the "A" payment which was made in 1917, up to the late fall of 1918; I don't exactly know the date; payments were made in cash as provided by the contracts; it later developed that these payments were not sufficient to finance the Groton Iron Work's construction of the boats, due to the fact that they were based on the contract price of $155.00 a dead-weight ton and on a base labor rate of 35c. per hour, whereas there had been two increases authorized by the Government, the first being what was known as the Nearing Ship Yard rate,

which increased the base rate from 35c. to 42c., and the second one, the Macey scale, went into effect in September, 1918, which increased that to about 54c., so that the payments as provided by contracts were not sufficient to finance the progress of the boats, so that in February, 1919, an arrangement was made with
270 the Fleet Corporation whereby they would finance the actual ship construction pay rolls as well as payment for materials entering into the construction of the boats, and progress payments as earned were credited against these payments which were designated on the Fleet Corporation's books as undistributed advances.

Examination by Mr. PARMELEE:

WITNESS (continuing). Prior to the receivership I was not comptroller. I was in charge of material. I did have personal knowledge as to the accounting end of the job beyond its relation to material at the time of the appointment of the receivers. I was assisting the treasurer at that time in getting up a statement for the Fleet Corporation prior to the receivership in conjunction with the accountant from Dennis & Young. That statement was being prepared for the accounting division of the Fleet Corporation. As comptroller I immediately went back over the accounts from the very beginning, and I am familiar with what happened. Up until February, 1919, or take the date when the receivership began, the payments under the arrangement up to that time, progress payments or payments under the new arrangement, had not kept pace with the actual cost of the ships under these increased wage scales.

The MASTER. I understand the witness is testifying to his own knowledge, Mr. Giddings, and unless there is something further you wanted to say about it I will let the answer stand and deny the Motion to strike it out, and grant the defendant an exception.

271 Examination by Mr. STOUT:

WITNESS (continuing). During the receivership the method of payment by the Fleet Corporation and the basis on which payments were made was that the same arrangements were made by the Fleet Corporation in advancing money to the receivers that were made to Groton Iron Works as a corporation the two months prior to the appointment of the receivers; in other words, the Fleet Corporation advanced the actual construction pay rolls and the payment for the material entering into the ships. I did have occasion to take up with the representatives of the Fleet Corporation during the receivership claims for increased costs beyond the amount which had actually been advanced by the Fleet Corporation. These matters were taken up first with Mr. George Strong who was district comp-

oller of the Fleet Corporation in Boston and later with the comp-
oller's office in New York.

Mr. PARMELEE. I object to that and ask that the answer be stricken
t unless the witness can limit it to his own personal transactions.
e states, "They were taken up." I object to this witness testifying
to what was done except by himself.

WITNESS (continuing). I took up these matters personally with
Ir. Strong. I also took up the matter personally with the people in
ew York. In New York (there were several district comptrollers
New York) I conferred with the first that I recall was a Mr.
evis; he was succeeded by another man, but I can not recall his
name, who, in turn, was succeeded by Mr. McNary, and
Mr. McNary was still comptroller when the receivership was
lifted. Mr. McNary's personal representative in charge of
ese claims was Mr. Sullivan. I took up some of these claims of
e receivers with Mr. Sullivan or Mr. McNary. As to the nature
f the claims which I took up with those gentlemen there were ap-
roximately twenty different claims which arose under the inter-
retation of contract 57, the largest of which was the excess or in-
eased wage claim. The next in size was the claim known as
anges and extras, and the other claims varied in amount and size.
s to any particular occasion on which I discussed these excess wage
aims, or changes and extras, or other claims with Mr. Sullivan
Mr. McNary, I can not recall at this time the exact date, but Mr.
ullivan was at the plant of the Groton Iron Works two or three
mes a month during the fall and winter of 1919. I had these mat-
rs up with him on a number of occasions, both personally and
rough correspondence. Up to the end of March, 1920, I can state
round figures approximately the amount of such claims asserted
the receivers at that time.

WITNESS (continuing). There were prepared from time to time
aims by the receivers, prepared by myself, to the Fleet Corpora-
n under both contracts. Now as of the time the yard went back
Morse, there were three ships which were under construction, so
at at that time it would be impossible to file a final claim because
e Fleet Corporation was still advancing money, but there were
ims prepared by the receivers, prepared by me for the receivers,
cluding the cancellation claims and claims of all sorts of different
kinds.

Q. What was that amount?

Mr. PARMELEE. That is objected to for the reasons stated
my objection to the last question.

The MASTER. If the witness has an independent recollection now, or knowledge of the amount of claims presented at that time, I think he can tell; exception may be noted by the defendant.

The WITNESS. I can not state the exact amount, but as I recall it, without refreshing my memory from any papers that I have, it was around two million dollars.

Mr. PARMELEE. I object to the answer and ask that it be stricken out as being too indefinite and too uncertain to be evidence.

The MASTER. The answer may stand. Exception may be noted.

WITNESS (continuing). May I say that I have a paper here which is dated March 11, 1920, which was just prior to the March 20th agreement, showing the amount that the receivers estimated was due on the Groton contract? After refreshing my recollection from this paper I have in my hand, I can fix more definitely the amount of claims asserted as of that date, March 11th—namely, $1,142,615.58 on the steel contracts 57 and 225. There was an additional amount of claims asserted on the wood-ship contracts at that time—about seven hundred thousand dollars, as I recall it. During the fall of 1919 I had occasion, as comptroller for the receivers, to make up a statement showing the cost of construction and the estimated price per ton which would be necessary to complete the ships on
274 the steel contracts. The statement was made up in September 1919. I have that statement, or a copy of it, with me. That statement after I had prepared it was kept in my file and used to inform the receivers from time to time as to the amount that they might expect—that is, as a basis, the amount of the lump-sum agreement which we hoped to negotiate with the Fleet Corporation in full settlement of all claims. I furnished that statement, or a copy, to representatives of the Fleet Corporation at that time, or about that time, Mr. Sullivan and Mr. Eason.

Examination by Mr. PARMELEE:

WITNESS (continuing). I prepared these two papers bearing date of September 15, 1919, and entitled "Estimate of Cost of Completion of Contract No. 57–SC and Contract No. 225–SC, respectively. I am not a shipbuilder. I estimated the material for each of these six steel hulls in this way. There was a bill of material prepared by the production department of Groton Iron Works for the receivers which showed every plate, channel iron, and piece of machinery necessary to go into those boats. I did not prepare that part of the cost estimate myself; that was furnished to me by the production department and priced in my department. I do not know if the preparation of these statements required a computation of the percentage of completion of the boats at the time. There were percentage figures made up from time to time by both the

Fleet Corporation and the inspectors and the production department. I did not make up such percentage of completion figures. They were furnished to me by the department. As to the items "direct labor," I knew the direct labor already expended
275 showed in the cost book. The direct-labor estimate was prepared by the naval architect, Mr. Trowbridge. It was not prepared by me. I personally distributed the items under heading "Overhead" on the basis of the expense to direct labor. This was not furnished me by somebody else. We charged overhead only to direct labor which had already been paid for—not necessarily paid for, but extended. The overhead for uncompleted ships was based on 50% of direct labor. The estimated direct labor to be required was prepared by the naval architect. That is a matter which I would not have deemed myself competent without study other than I made to have done it myself. In other words, the great bulk of this estimate of cost of completion is a mere col'aboration, or condensation, by me of the work of others in so far as the labor is concerned, but not so far as estimated material is concerned. We knew from the bill of material there was only so much material to go into those boats. That amount was determined for me by bills of material which were furnished by the production department, but costed in my department. The statements on these sheets relative to contract 225–SC, "judging by figures arrived at from the estimate of cost to complete vessels under contract 57–SC, and looking for the anticipated increase of 10% in direct labor, and so forth, it is thought that the first three can be built at the cost of $172.00 per dead-weight ton," was a conclusion resulting from a conference which I had with Mr. Trowbridge, our naval architect and former district manager of the Fleet Corporation, and Mr. Conlin, also a former district manager of the Fleet Corporation, who were both experienced shipbuilders. I handed this to Mr. Sul-
276 livan because he was anxious to know how much money would be required to complete these ships. I might say that the receivers of Groton Iron Works received, about every month, circulars and requests from the home office of the Fleet Corporation for statements as to the amount of money which we would require to complete these ships; these statements were either received direct or through representatives of the Fleet Corporation. I know that this statement was furnished to Mr. Sullivan and to Mr. Eason in response to requests from them as to how the receivers figured they were getting along.

Mr. GIDDINGS. All we offer is the typewritten part of it, if your honor please.

Admitted, Exhibits 30 and 30[1].

Exception by defendant.

The MASTER. The pencil markings on these exhibits are not admitted in evidence.

Direct examination by Mr. STOUT:

WITNESS (continuing). From these statements I made a computation of the price per dead-weight ton which would result in the figures shown by these statements with the totals in the margins which you have estimated here. Those figures per dead-weight ton on contract 57 were $199.16 and on contract 225 were $200 per dead-weight ton. I have since discovered an error in the mathematical computation of those figures from such statements.

Q. What was it?

Objected to as immaterial.

The MASTER. The computation on which he bases that statement as to contract 57 was $199.16 per dead-weight ton, and the other $200.

277 (Admitted.)

Exception by defendant.

WITNESS (continuing). There was a stenographic or typographical error of two thousand dollars in the total which was typed $10,546,122.06 and should have been $10,548,122.06, which would have made a difference of a few cents more, or about $199.20 a dead-weight ton instead of $199.16, if the correct total had been typed. A copy of these per dead-weight ton figures of $199.16 and $200, as the result of my computation, and a copy of these statements were given to Mr. Eason without the pencil memoranda which appear on them. I did not furnish any other such statements or figures of the estimated cost of completion to the receivers of the Groton Iron Works or the officers thereof—that is, up to the time on which the plant was turned back to the Groton Iron Works. I do not recall if there were any subsequent figures furnished of this nature to the Fleet Corporation. About March 26th, 1920, I had occasion to make an estimate for the receivers of the price per ton at that time which would be necessary to complete.

Q. Was that price greater or less than the price per ton which you have just testified to?

Mr. PARMELEE. That is objected to as irrelevant and immaterial and no privity between the receivers.

The MASTER. Prior to the contract of March 26th, 1920, which has been set up as a defense in accord and satisfaction?

Mr. STOUT. Yes.

(Admitted.)

Exception by defendant.

The WITNESS. It was greater.

278 Q. What was the figure which you estimated at that time?

Mr. PARMELEE. That is objected to. The estimate made in writing should be produced.

The MASTER. You mean, I suppose, by your question what was the price which he submited to the receivers?

Mr. STOUT. Yes.

The MASTER. With that correction, I will admit the question.

Exception by defendant.

WITNESS (continuing). The statement of March 11 which has been produced shows that figure. After refreshing my recollection from that statement I state the figure was on contract 57–SC, $202 dead-weight ton; contract 225, $200 dead-weight ton. The first occasion on which I had knowledge of the negotiations for the arrangement for the lifting of the receivership and the return of the plant to the Groton Iron Works was in March, 1920. The occasion was when the attorneys of Groton Iron Works appeared in the superior court sitting in New London and announced that there was then under negotiation with the Fleet Corporation a new contract which would lift the receivership. That was approximately March 13th. Of my own knowledge I know the receivers did not have any information of such contract or such negotiation prior to that date. The receivers at that time had made a request for authority for the sale of the plant to my knowledge. The only outside contract the receivers at that time had was with the Noank yard in the repairing of fishing boats for Hayes & Anderton,

279 but they were under negotiations with several different shiping companies leading to contracts for construction of new boats. After April 8, 1920, I became a special representative for the Fleet Corporation. I know how much money was advanced by the Fleet Corporation to Groton Iron Works subsequent to April 3, 1920, the return of the plant to Groton Iron Works, up to April 17. There were two pay rolls paid approximately of $100,000; there was $250,000 advanced at the time the receivership was lifted to pay 20% to all creditors, except those whose claims Mr. Morse held and which were subordinated under that agreement, and that was practically all. All vouchers for payment of material bills were held up, and no checks were disbursed by the disbursing officer against the Fleet Corporation until the latter part of April. There was a period of about a month that there were no disbursements made by the Fleet Corporation for Groton Iron Works or the receivers of Groton Iron Works except the weekly pay rolls, which amounted in this period to about $100,000. Referring to com-

plainant's Exhibit 24, which is a statement of expenditures April 28, I call attention to the item under "Undistributed advances April, 1920"; the items "Supplemental agreement payment $250,000; pay roll advanced $101,606.10." Those figures represent to my knowledge the total amount of payments up to April 19, 1920, by the Fleet Corporation after April 3. The $250,000 which I referred to to pay the creditors was actually advanced and paid over by the Fleet Corporation on Saturday, April 3, 1920. The approximate amount of the weekly pay roll at that time was around $50,000.00.

280 After I became special representative of the Fleet Corporation I had occasion to take up with representatives of Groton Iron Works, or in conjunction rather, or with other representatives of the Fleet Corporation, the matte rof the reconcilement of the accounts on the wooden-ship contracts. I was requested to attend two or three conferences in New York by Mr. E. McNary, who was district comptroller and to whom I reported directly, and those conferences were held at No. 45 Broadway, and there were present, as representatives of the Fleet Corporation, Mr. McCormack, Mr. McNary, Mr. Sullivan, and as representatives of Groton Iron Works, Mr. Strong, Mr. Burditt, Mr. Rood; later there was a conference held in Philadelphia in July at the home office of the Emergency Fleet Corporation before Mr. Murdock, who was, I believe, an examiner—and these Noank claims were gone over in a great deal of detail, and I know that there was also present Mr. Jewett, who was formerly inspector for the Fleet Corporation at the Noank yard. This reconcilement was never brought to completion to my knowledge. The reason that it was impossible for the receivers of Groton Iron Works or the Fleet Corporation to come to an agreement on a statement of claims of the Noank yard was primarily due to the fact that the books of the Fleet Corporation were not in shape that an intelligible statement could be taken off. I had occasion to examine the books of the Fleet Corporation myself. Alone and in conjunction with other Fleet Corporation representatives I attempted to ascertain the figures as shown by the books of the Fleet Corporation or make statements therefrom.

Cross-examination by Mr. PARMELEE:

281 WITNESS (continuing). I can clear up the relation between assumed progress payments which were credits and actual advances to meet pay roll, construction, material, and so forth which I testified was done at one period. Progress payments were based on the contract price of $155.00 a dead-weight ton. These progress payments were to be paid to Groton Iron Works by the Fleet Corporation as the work progressed to various stages as out-

linked in the contract. Practically immediately after the work was started on the ships the Government authorized an increase in wages, and these increases were authorized periodically up to April, 1919, when the second Macey scale went through. The contracts provided that any increase in wages should be compensated to the shipbuilder by the Fleet Corporation, and as early as the fall of 1918 Groton Iron Works endeavored to come to some satisfactory agreement with the Fleet Corporation as to the new lump sum price to which they would be entitled in lieu of these increases and to avoid the enormous clerical work in computing the amounts or the portion of the pay roll of the weekly pay of each man which should be paid by the Fleet Corporation and which should be paid by the contractors. Those negotiations were in progress when the receivers came in. The progress payments were paid up to and including the month of December, as I recall, 1918. During that same time the Fleet Corporation advanced a total of $350,000.00 in cash, in addition to the progress payments as an estimated advance pending the settlement of the actual amount which was due Groton Iron Works for excess wages. They departed altogether from the idea of paying progress payments to pay cash and in some way or other
282 carried who would have been progress payments on their books. In the early part of February, 1919, a new arrangement was entered into between the Fleet Corporation and Groton Iron Works whereby the Fleet Corporation paid the actual construction pay rolls; I say by construction, but they did not finance any building construction as such, but they paid by countersigned checks and approved of the vouchers the actual material going to the cost of the boat on what was called "approved lists," starting with the letter "A." Naturally such sums as were paid were in excess of what would have been the progress payments due under contracts had they continued on that basis, because the progress payments were based on $155 dead-weight ton and because they had authorized increased wages, naturally. I would not say they paid the ship construction cost. They paid ship construction bills as distinguished from costs, because there were several items of cost which entered into the ship construction which the Government did not pay, such as a portion of the executives' salaries. They did not pay any of the executives' salaries. In April, 1920, the Fleet Corporation, or the Government, advanced only $350,000—that is, two pay rolls and the advance of $250,000. I get the figures for that from the Fleet Corporation books. As to my examining the Groton books on the subject, I passed all the vouchers as special representative. I examined the Groton Company's books. The result of my examination of the Groton books was the same. Of the Fleet Cor-

poration books I saw the disbursing officers' and the Fleet Corporation records in Mr. McNary's department; I personally ex-
283 amined every disbursement made by the disbursing officer, Coogan. There was a lot of material coming in all the time; yes. As to this being in addition to the cash of $350,000, it was not being paid for. The question was how much money did the Fleet Corporation advance. The material was coming in on credit to Groton Iron Works, and Groton Iron Works were preparing vouchers requesting payment by the Fleet Corporation with countersigned checks which were going through by the hundred every day, but the only money actually advanced by the Fleet Corporation in that period was the pay rolls. The Fleet Corporation did not furnish Groton during that period then any material or steel. It was already in. My testimony that $350,000 was all that was advanced means merely to April 19th—that is, for the first two weeks and a few days of April, a period approximately of two weeks from the effective date of the March 26th contract. Mr. Burditt, prior to the execution of this contract, did not spend some time at the plant in preparation of the contracts. He was not there at all. I do not recall that any lawyer, or accountant, or engineer came down to Groton around March 20th representing the Morse interest. I might correct this by saying that I remember a telegram which was received from John Barton Payne asking the receivers to allow Mr. R. O. White to look at certain claims in the plant—that is, creditors' claims—and I believe Mr. White was there about that time, but he did not take up anything pertaining to any figures between the Fleet Corporation and Groton Iron Works or the receivers of Groton Iron Works. As to my furnishing for the purposes of the
284 contracts the memorandum from which I have testified which I prepared about March 15, 1920, from which I refreshed my recollectoin at the beginning of my testimony, I furnished thousands of statements to the Fleet Corporation. I furnished nothing to Mr. Morse of any of his representatives. I did not testify before the Walsh committee that that statement contained the figures which were the basis of the March 26th conract. If I did it was incorrect. The figures that formed the basis of the March 26th contract were the figures that have just been put in evidence, $199.16 which were given to Mr. Eason back in September. May I explain here the relation between the Groton Iron Works and the receivers? The Groton Iron Works, in July of 1919, brought an action in the Superior Court before Judge Maltbie, a request or motion to throw the receivers out as being incompetent, and we had a two-day hearing, and Judge Maltbie refused the motion; and after that there was absolutely no contact at all between the receivers and the Groton Iron

Works. I did furnish this March 15th statement to Mr. Nottingham. And this letter you have handed me that I have just inspected, dated March 20, 1920, is signed by me as comptroller, is addressed to Mr. Nottingham, and is my letter that I send him.

Mr. PARMELEE. I offer the letter and statement in evidence.

(Received and marked "Exhibit Y.")

WITNESS (continuing). As to the condition of the Fleet books as rendering an account difficult, the Fleet Corporation at that period had by way of books a voucher register, contract register; they
285 had statements prepared from the contract register showing the status of Groton Iron Works or the receivers there with the Fleet Corporation, both on the wood ships and the steel ships. As to their having accountants in charge of their books, I would not call them accountants; they had clerks. I examined all the books with reference to Groton Iron Works and I presume that they were all in the same shape with other contracts. I do not know about other contracts. They had to employ the firm of Ross Brothers—Lybrandt, Ross Brothers and Montgomery to straighten them out. The employing of Lybrandt, Ross Brothers and Montgomery indicated a bad state of accounts with the Fleet Corporation because they had to rewrite the books from the very beginning, which showed clearly that they were not correct. I would not say that anyone who employs Lybrandt, Ross Brothers and Montgomery have bad books; but I would say that if an auditor has to rewrite a client's books from the very beginning that they are in bad shape. I have direct knowledge by one of their accountants, Mr. H. J. Aughe; hearsay from one of Lybrandt, Ross Brothers and Montgomery's accountants, also, by direct knowledge, one that I had personally with one of Lybrandt, Ross Brothers and Montgomery's accountants in the office of the Fleet Corporation's attorney in New York. I was called down and requested to give certain information on the Noank claims, Noank reconcilement, which would assist him in completing his reports, and it was stated at that time that the books had to be rewritten. I know it apart from hearsay by direct knowledge. I am not a certified public accountant.

286 Redirect examination by Mr. STOUT:

WITNESS (continuing). Another feature of the progress payment arrangement which made that arrangement impracticable as it turned out, other than the increased labor costs which made that insufficient, was that progress payments were based on a boat which was not of the same type of boat as the 8800-ton Dollar Line boats constructed by the Groton Iron Works. It was not based on the progress of the Isherwood type boat.

Recross-examination by Mr. PARMELEE:

WITNESS (continuing). I was informed that Lybrandt, Ross Brothers and Montgomery rewrote the Fleet Corporation's books with respect to the Groton Iron Works matter during the years 1920 and 1921. It may be true that in a statement dated November 3rd, 1921, addressed to Messrs. Rushmore, Bisbee & Stern, Lybrandt, Ross Brothers and Montgomery stated that "Pursuant to the instructions of Mr. Elmer Schlessinger, general counsel of the United States Shipping Board, we have made an examination of the accounts and records of the Emergency Fleet Corporation in so far as they relate to contracts between the Fleet Corporation and Groton Iron Works for the purpose of determining the account" and so on, and make no reference whatsoever to rewriting their books.

HEARING AT NEW YORK, ON APRIL 13, 1925

Appearances: Attorneys for complainant, Herbert B. Lee,
287 Esq., William H. Griffin, Esq., Robert P. Stout, Esq., H. Starr Giddings, Esq.; for defendant, Henry F. Parmelee, Esq., general assistant to the Attorney General.

Mr. PARMELEE. If your honor please, on page 9 of the testimony taken August 20th, in 1669, I offered the Executive order of President Wilson, dated July 1, 1917; also certain other Executive orders which went into evidence, but it nowhere appears that your honor ruled on the admission of these Executive orders. I now ask if your honor will note the acceptance in evidence of the several Executive orders.

The SPECIAL MASTER. They are admitted.

Mr. PARMELEE. The stenographer will note that they are admitted in evidence—Executive order of July 11, 1917; Executive order of June 18, 1918, and Executive order dated December 3, 1918, and that the contents may be shown by any proper publication.

(Marked "Exhibits A–1, B–1, and C–1," respectively.)

At the last hearing we were requested to produce a copy of the contract on the lump-sum basis of Form E. I hand counsel a photostatic copy of this Form E.

(Marked in evidence as "Exhibit 32.")

THURLOW M. GORDON, witness for complainant.

Direct examination by Mr. STOUT:

I am a lawyer and member of the firm of Cotton & Franklin.
288 In the summer or fall of 1919 I did have relations in my professional capacity with the affairs of Groton Iron Works. My firm had been active in the affairs of the Virginia Shipbuilding Company. At the conclusion of the negotiation of a contract which was

nded to straighten out the affairs of that company, we were re-
ted to try to help in straightening out the affairs of Groton Iron
rks, which was at that time in a receivership. We had a hearing
ore Judge Payne, who at that time was the head of the Shipping
rd. These hearings began roughly in September, 1919. I sug-
ed to Judge Payne—at least I was present, in conference, and
e were other counsel there also—that Groton situation be handled
he Virginia situation had been. That plan was not acceptable to
ge Payne; he thought it would take too much financing on the
t of the interests who were behind the Groton Iron Works, and
as suggested that a supplementary contract or a new contract,
tever name you wish to call it, be entered into, which would pro-
e for a continuance of the financing and of the building of the
s at Groton by the Government, which would straighten out the
utes which then existed between the Groton Iron Works and the
ernment. As I recall the situation, there was a lump-sum con-
t for the building of ships at Groton.

y reason of changes in the specifications, changes in the payment
wages, and wages advanced from time to time during the war,
necessity of having extra guards to prevent injury from German
s, and one thing or another, quite a number of additional charges
had become due, which would increase the contract price by
some indefinite amount; it was a matter of dispute how much
every ship cost, because it was not possible to determine it in
ery precise and mathematical way.

n attempt was to be made to adjust that situation by making
e kind of an addition to the lump-sum price and certain other
ters in connection with the contract. Such a contract was gotten
and was modified in the hearings which would show what the
lt of that conference was. As to contract, complainant's Ex-
it 25, which you show me, of course, I could not remember the
ils of the contract at this time. There was such a contract
ered into some time in December, and this seems to be the contract
recall it.

Mr. STOUT. I would like it to appear on the record that this con-
t is already in evidence as complainant's Exhibit 25.

WITNESS (continuing). During these negotiations leading up to
making of this contract and in these conferences—you call my
ntion to the fact that there is fixed in this contract a lump-sum
e of $199 per ton and $200 per ton for steel vessels—and I recall
nversation or conference with regard to the fixing of the lump-
price per ton, and particularly with regard to the basis on which
figure was arrived at.

Q. In these conference can you tell us what was said, if anything, by those that were representing the Groton Iron Works, with regard to access to the figures or books of the receivers?

WITNESS (continuing). To my knowledge we did not have any access to the books of the Groton Iron Works at that time.

By Mr. STOUT:

Q. Did you at that time, during the negotiation of that
290 contract, have or obtain any statements from the receivers or from the books of the Groton Iron Works with regard to the status of the advances and payments under these receiver's contracts?

WITNESS (continuing). That is the fact; yes, sir. We were retained in our professional capacity to perform services on behalf of the Groton Iron Works in the matter of a contract with that company with the Fleet Corporation. I was attorney for the Groton Iron Works at that time. In that one capacity, yes. We were not general counsel for the Groton Iron Works, but my firm was retained to——

The SPECIAL MASTER. Were you acting for the Groton Iron Works?

The WITNESS. I was acting on behalf of the pricipal stockholders of the Groton Iron Works. The Groton Iron Works at that time was not doing any business at all, because it was in receivership.

By Mr. STOUT:

WITNESS (continuing). As to any figures or information with regard to the status of the account between the Fleet Corporation and the receivers on the Shipping Board contract at the time we entered into these negotiations, I had none from the receivers. I had none from the books, as such, of the Groton Iron Works. I think there was conversation had at those conferences with regard to me or my office representing the Groton Iron Works, and having or obtaining access to the books or getting information from the receivers.

By Mr. STOUT:

Q. What efforts, to your knowledge, were made by anyone
291 acting for the Groton Iron Works to obtain information from the receiver?

A. I do not recall that I made any particular effort prior to the negotiation of this contract, because I was instructed——

Mr. PARMELEE. I object to it after the word "because"; that is not responsive.

The SPECIAL MASTER. Do you want to modify your answer?

The WITNESS. Merely that the reasons why were all known to the commission and discussed with the commission.

WITNESS (continuing). We had repeated conferences with Judge Payne and Commissioner Scott and with Mr. Nottingham, who was

acting as counsel in this particular matter for the Shipping Board, and with various others, but I remember them particularly. Mr. Gillen was another. We contended when they started to negotiate the amount which we should receive by way of addition to this lump-sum contract that we had no way of telling how much addition should be made to the agreement. That we did not have the books; that the books were in the possession of the receivers. We asked for the books when the Shipping Board agured on the subject. As to our request, they first authorized somebody here in New York to give us a statement showing the advances to the Groton Iron Works. I can not tell the precise name of the gentleman who gave them to us, but we went to see him, the auditor here in New York, and he gave us a statement—a very general statement. I recall very little about any statements further than that with regard to it, because the books were at the plant. I think a letter was dictated which was a mere gesture on the
292 part of the commissioner, Commissioner Scott. And the letter was never presented by me. We have no copy of the letter.

The SPECIAL MASTER. Have you a copy of the letter?

Mr. STOUT. No; we have not, sir.

The SPECIAL MASTER. The letter was written and signed, is that what you mean, Mr. Witness?

WITNESS (continuing). Yes. As to whether such a letter was sent I do not think it was sent. I was in a position to have known. I do not know of anyone ever presenting it. At that time the relations between the receivers and the officials of Groton Iron Works, the principal stockholders, and Mr. Morse were not friendly. I had no part in any steps taken by the stockholders and officials of the Groton Iron Works in the summer of 1919 or thereabouts for removal of the receivers then in office or for a substitution of other persons as receivers. I know of such application only by hearsay. I recall having a conversation with Mr. Gillen with regard to furnishing us with the Fleet Corporation's figures as to the status of these shipbuilding contracts. After we had received this statement from the auditor in New York, we checked that up and realized that it was quite inaccurate. This was part of my statement to Mr. Gillen; we told Mr. Gillen so. We asked them for a complete statement of the debits and credits between the Shipping Board and Groton Iron Works. Mr. Gillen became very angry with me and refused to give us anything and said that they refused to show the Shipping Board's trading position in the matter. We did say something to Mr. Gillen at that time about this statement being three millions of dollars out of the

way. As I recall it, that was the amount that it was out
293 of the way, but my recollection is not very clear on that It was a large amount out of the way. After that conversation with Mr. Gillen, Mr. Eason, an auditor, was sent by the Shipping Board to Groton, and came back with a statement; we were not given copies of that statement, but Mr. Nottingham permitted me to look at it. It was on the basis of a statement prepared by Mr. Eason that the new contract was negotiated. I am referring to the contract that was executed; yes; the contract of December 20, 1919, Exhibit 25. At that conference at which I examined this written document of which I spoke to Mr. Nottingham, there was something said as to whether these increased prices would or would not make available sufficient money to complete the construction or the remaining cost of construction. It was understood by all parties. There was something said at that conference. I can only recall the substance which was that these new lump-sum prices would provide sufficient money to complete the ships and leave a profit.

Mr. PARMELEE. I object to that and ask that the answer be stricken out. In no sense is that binding on the Fleet Corporation—what somebody at some time said thus and so.

The MASTER. I will let the answer stand.

WITNESS (continuing). As to whether there was any conversation with regard to what these figures showed on the statement which was shown to me, this conversation was all in connection with the statement, directly applicable to the statement.

Q. Can you recall from your observation of that document whether the figures shown thereon tended to support that statement?

294 Objected to as immaterial and incompetent.

The SPECIAL MASTER. I will permit everything that was said at this conversation concerning any paper that was submitted by the Fleet Corporation to the attorneys of the Groton Iron Works, and all that was said in discussing those figures in order to make up the contract, Exhibit 25; whatever comment was made by either party to it.

Mr. PARMELEE. Will your honor give me an exception?

WITNESS (continuing). My recollection was that we discussed the statements together, and we agreed that they did show a sufficient sum to complete the ships and leave a profit. As to our having any other figures at these conferences to show what the Fleet Corporation's books or records showed as to the advances and the details which went to make up the situation as stated by Mr. Nottingham, my recollection is that the Eason statement was the only thing that I ever saw or that we had as a basis to discuss the new contract upon. As to this statement being a tran-

script of the books of the Fleet Corporation, it was a very brief statement, a page or perhaps two pages, as I recall it, a typewritten conclusion. The working papers were not there. We were never given access to the working papers or books of the Fleet Corporation.

Mr. PARMELEE. Or anyone, to your knowledge, representing the Groton Iron Works?

The WITNESS. No one to my knowledge.

295 Q. You stated you requested from Mr. Gillen some information as to what the Shipping Board's books showed about this situation. Did you consider that the knowledge of the Shipping Board's books was essential to your mind, or the Shipping Board's position on the situation essential to your part of the negotiations?

Mr. PARMELEE. I object to that, if your honor please, as to what he considered, as immaterial.

The SPECIAL MASTER. Sustained.

WITNESS (continuing). I did make a statement to Mr. Gillen or other representative of the Fleet Corporation as to the reasons why I desired to see the figures of the Fleet Corporation. The reason I gave Mr. Gillen was, it was a very intricate matter, involving a matter of millions of dollars, and we were trying to trade almost in the dark. The only way a man can trade is to find out what the other man's position is and then state your views and try to get him to agree to it.

Q. Did you have any other information on which to trade, other than what the Fleet Corporation gave you at that time?

WITNESS (continuing). As to our having any other information on which to trade, other than what the Fleet Corporation gave us at that time, of course, some of the matters referred to are matters of general knowledge. I mean the advance in wages on entering the war and that kind of thing, but the specific figures—those were the only figures we had. With reference to the amount of advances made up to that time for construction and the figures shown by the books, I do not recall any other. Conversations were had at which I was present with a representative of the Fleet Corporation or the Shipping Board with reference to the fact that we had no other

296 information as to the advances and figures in the books. As to whether that was stated at the time to a representative of the Fleet Corporation or other persons; oh, yes, they knew it just as well as I did. I think there was a conference at which there was discussed the question of the financial ability of the Groton Iron Works to finance the additional construction. I can not give you

the date. We had a number of conferences over that period of a month or more—almost daily interviews with some representative of the Shipping Board. I can not distinguish from day to day who was present at a particular time. We began in September and ran on from time to time until December, 1919.

Q. What was said on this point of the financial capacity of the Groton Iron Works for raising money to complete the construction?

Mr. PARMELEE. I object to that, if your honor please; the conversation is not identified; it is not shown with whom it took place.

The SPECIAL MASTER. Do you recall any conversation or any conference in which such a matter as that was discussed?

WITNESS (continuing). The only one I recall clearly is the first one where Judge Payne refused to take up the same kind of an arrangement that was had in the Virginia case; that he thought we could not carry it out. That was in September, 1919.

The SPECIAL MASTER. Wasn't there one you mentioned with Nottingham?

WITNESS (continuing). I think Mr. Nottingham was pres-
297 ent; it was quite a good-sized conference. I think Mr. Morse was present and Mr. Nottingham and Judge Payne. I do not think Gillen was there. That is the only one I recall specifically, any specific discussion about it. Of course, the Groton Iron Works was then in a receivership anyway, and speaks for itself. As to anything being said at that conference or at the conference at which I testified I saw a statement, some figures, through Mr. Nottingham. As to the Groton Iron Works realizing on this contract or obtaining money to complete the construction, the contract provided for that expressly, as I recall it. Well, the whole basis from which we were discussing the matter was that the Government would go ahead and furnish funds to complete the ships. The Groton Iron Works Company had no money and no source of income; it could not have built those ships. It was perfectly obvious to everybody they could not build those ships unless the Government advanced the money. After the signing of this contract, Exhibit 25, of December 20, 1919, the one I negotiated, my recollection is that I rather dropped out of the picture. The program called for negotiations with the creditors of the Groton Iron Works and acts to be done in connection with the receivership in the courts up in New London, or wherever it was. Now, another lawyer, Mr. Blodgett, who had been very active in some matters before the Shipping Board, took that over, and we did not have a very active part in connection with that; practically nothing. I know that Mr. Blodgett negotiated a subsequent contract on which the receivership was revoked, but this particular one, of

December 20, 1919, was not revoked under the terms of this subsequent contract. I attended a conference in Washington at
298 the Shipping Board office about March 30, 1920, at which there were present Chairman Benson, Mr. Morse, Mr. Blodgett, and Mr. Nottingham, that is in the Fleet Corporation. I remember in general at that conference there was some discussion about making a contract along the same lines as this one of December 20, 1919, providing for the lifting of the receivership. In the discussion at that conference, I took, I think, very little part. I was rather, as I recall it, rather an interested observer, but not a very active participant. Mr. Blodgett was present at that conference. My recollection is that he took practically the main part from the standpoint of Mr. Morse's interests. As to defendant's Exhibit X, which purports to be a stenographic report of that conference, I never saw this; I looked it over; I think you sent me a copy of it. I notice that in this statement here I am reported as having made a number of observations, but I think that the stenographer must have confused me with Mr. Blodgett and put my name down in place of Mr. Blodgett's name. I can not recall the language of any such copy or of making all of these remarks, because in the nature of things I would not have been likely to have made reference to these things when the representatives of the corporation were present. I note at page 10 of this exhibit a record of a statement made by myself in supposed reply to a question by Colonel Abadie as to whether that recalls anything to my mind and whether I recall that statement being made by myself or Mr. Blodgett; it does not refresh my recollection at all. I might have said something at the time, but I do not recall saying a word at this conference. My recollection is
299 that I just was present. As to the statement which refers to a contract which "we drew in New York the other day," I could not have made any such statement, because I did not draw any contract in New York, not at that time. Mr. Blodgett was in complete charge of the negotiations at that time. I was not doing any active part in it. I was one of those present. My recollection is I did not attend a single one of the hearings before the Connecticut court with regard to the receivership between December and March. I never went to the court at all, as I recall it. I had no part in making the arrangements with the creditors or the arrangement with the court as to lifting the receivership.

Cross-examination by Mr. PARMELEE:

WITNESS (continuing). The name of our firm is Cotton & Franklin, lawyers, in New York. I think at one very early period Mr. Cotton was attorney for Mr. Goethals at the very start, when Mr.

Goethals was head of the Emergency Fleet. My partner was Joseph P. Cotton. As to his being general counsel of the Fleet Corporation, I couldn't give it accurately at this time, but I imagine that was what he was. He was in Washington in that capacity at the start of the Fleet Corporation. I couldn't say how long. I was then associated with Mr. Cotton. I was not a partner at that time. I have been with this firm of Cotton & Franklin ever since. I was not personally at any time counsel for the Fleet Corporation. Mr. Cotton's employment was purely individual and independent of the firm or of me. As for Mr. Cotton and myself being counsel, he was a member of the firm at the time that was handled, but I do not think he had anything substantial to do with the Virginia
300 Shipbuilding matter. The firm as such handled this Virginia situation in 1919. A contract relative to various shipbuilding contracts was entered into. I think that matter has since been the subject of litigation. We have had nothing to do with this pending litigation in Virginia. Our employment as counsel for the Virginia company ceased on the completion of this contract of 1919, substantially so; there may have been little small matters which came up within a few months later, merely loose ends to pick up and tie together. We did not continue as counsel for that company. I do not know whether Mr. Stuart Gibboney or Mr. C. W. Morse personally retained us in the Groton case. Mr. Stuart Gibboney was of the firm of Barber & Gibboney as it then existed. As for Messrs. Barber & Gibboney being personal counsel for Charles W. Morse, they had been counsel for these companies, too, I think, in some respects. As to whether our retainer was either for Mr. Morse's counsel or Mr. Morse, you are raising a question of a long while ago. I could not really recall now whether the company as such had any counsel in that situation or not. The company, of course, must have signed the contract, must have participated in the negotiations. I do not know whether they technically were our clients or whether Mr. Morse was our client. I have said that the receivers and Mr. Morse were not friendly. The names of the receivers are not very clear to me now. I think Mr. Conlin; I do not recall the name of the other man. I think there were two. I think I have met them. I did not have any active contact with them. Regarding the basis for the
301 statement that the receivers and Mr. Morse were not on friendly terms, I would find it hard to say just how I happen to know it, but I knew it as a fact at the time. They had told me they were not friendly with Mr. Morse, if that is what you mean. It is not a fact that such information as I had on that subject emanated exclusively from Mr. Morse. I do not think that is a fact. Mr. Morse told me that. I am very sure I was so told by some

one else. I could not say by what person or how many persons or which particular person I heard of that that were engaged in the situation. It was a matter that was treated by everyone as a matter of common knowledge. I do not think I have any documents or correspondence indicating any unfriendly treatment of Mr. Morse by the receivers, except when I tried to get a statement as to the creditors, I found great delay in getting them. Sometimes they did not come. I did not personally communicate with the receivers to endeavor to get that of my own knowledge, but I was told Mr. Morse did. I knew it was at the time that he wanted to get a list of creditors and he didn't get it. What steps Mr. Morse took to get them I know only from what he told me. I do not know enough about his relations at the receivership end of the situation to say whether the receivers were unfair to Mr. Morse in any way. If any such unfriendliness existed, as to whether it was personal rather than official, I couldn't say. But out of that situation as to anything that the receivers did which was prejudicial to Mr. Morse or his interest, I do not think I am qualified to testify about that. I know of this sort of thing only by the atmosphere which existed at the time. I felt it was useless to go to the receivers to get any-
302 thing from them. As for that atmosphere, so far as I know, being in part created by Mr. Charles W. Morse, it was not only Mr. Charles W. Morse; it seemed to be created in general among all the people I came in contact with. I can not name the individuals who indicated that fact to me. I told Mr. Gillen, as I recall it, after checking up certain statements he had, that there was an inaccuracy of some three million dollars. As to my being misled by that particular inaccuracy, it was so gross that anyone could have seen it was an error. Mr. Gillen refused to furnish further statements. As for his continuing in that attitude, and refusing to furnish other statements, it was rather a funny situation. He got very angry when I made this statement, and Mr. Nottingham did show it to me in a sort of surreptitious manner. I think Mr. Gillen must have known about it. Mr. Gillen did not give me that information. That was somebody in New York. Mr. Gillen did not give me any statements. The man who furnished me the paper which contained the three-million-dollar inaccuracy was then in charge of the auditing for this division, this particular office at New York. I don't recall his name. As to its being Mr. McNary, I would not know if you gave it to me at this time. I stated that Mr. Eason, an auditor, was sent to Groton and came back with a statement which Mr. Nottingham permitted me to see. Whether that statement was the basis for the March 26th contract, I did not participate in the negotia-

tions of the March 26th contract. If this Exhibit 25, which is a December contract, designates a specific sum to be paid by the Government in addition to the lump-sum price for the completion of the vessels, I think the contract speaks for itself; I can not recall
303 now what it does provide. I stated that it was understood and stated that the additional amount provided was sufficient without reference to this Exhibit 25, the sum total of all its provisions, whatever they were. As to how much this amount had been varied in the contract of March 26, 1920, I do not know the terms of the contract of March 26th. I probably have seen it some time. I do not recall it now. I think Mr. Nottingham stated that the additional amounts provided in this December contract were sufficient. I can not recall if Mr. Gillen did. I remember Mr. Nottingham as the one with whom I had the principal negotiations. Of course these things that Mr. Nottingham and I worked out, the form of contract, went up to the commissioner's office for review. I knew Mr. Nottingham was the lawyer of the Shipping Board and that he was not a practical shipbuilder. But he had practical and complete charge of all these negotiations. I was aware any opinion he might express as to the amount of money required would be an opinion secured by him from others based upon the proper officials of the Shipping Board. These conferences from September on to December took place in Washington. I was in Washington off and on during that period. I have not placed on the docket entries or records showing the various conferences I was engaged in in this matter at that time. I have a record of my work in this case at that time. I have odds and ends, scraps of preliminary draft contracts which Mr. Nottingham and I worked out as we went along from time to time; discarded drafts, and things like that. As to my recalling only one conference at which Judge Payne was present, he was present on a number of occasions. Whether I had some six or twelve con-
304 ferences on this subject with officials of the Shipping Board including Mr. Nottingham, I must have had at least ten or twelve, all in Washington. On March 30, 1920, I appeared before the Shipping Board itself in this connection. I mean members of the Shipping Board at a regular meeting. This meeting which I spoke of at which the suggestion was made that we go ahead on the same basis as the Virginia was before Judge Payne. Judge Payne wouldn't agree to that; there was a later hearing in which the contract came up for final approval. As to my remembering the occurrences at this March 30th conference, shown in Exhibit X, to be in accord with the possible substitution of Mr. Blodgett's name for mine, in some places as to what transpired there, this is a tran-

script of a conference in Washington at that time. My recollection is very general of that. I know there was some such conference and that I read it through; my recollection is very general about it. I do not see anything there in that transcript that I can state was erroneous other than I think the stenographer substituted my name for Mr. Blodgett's. I am led to that belief because my recollection is that Mr. Blodgett conducted the hearing for Mr. Morse, and that I just generally sat in. As to why, if I was out of the situation at that time, or practically so, I attended this hearing, I do not recall how it happened, at the present time. I had been in touch with the Morses or with the Groton Iron Works situation from the date of Exhibit 25, which was the 20th of December, 1919, until March; we expected to see it through; we hoped to see it go through. As to our still being at that time counsel for Mr. Morse, I do not know
that there was any definite period at which my interest
305 in that matter ceased; we were still interested in it.

Redirect examination by Mr. STOUT:

WITNESS (continuing). I stated I knew the name of Mr. Conlin as one of the receivers of the Groton Iron Works. It is my recollection that I did know at that time that Mr. Conlin had formerly been one of the district representatives of the Emergency Fleet Corporation. As to any data being given me by Mr. Nottingham at any time from which I could check up the statement which he showed me at this conference which I spoke about, to check up his conclusion or his statement that there would be enough money to complete the ships, why, he did not show us the working papers; he merely showed us the statement to work on. I had no other data from which I could check up the statement, not as I recall. I can't recall his ever showing me any figures except those of Mr. Eason's.

Recross-examination by Mr. PARMELEE:

WITNESS (continuing). In Exhibit X, Mr. Morse remarks, "Mr. McAdoo's office tried to get them"; has reference to our firm; Mr. McAdoo was a partner of our firm in between late 1919 and early 1920. Just what figures in this contract I understood Mr. Nottingham to state would give the Groton Iron Works enough money to complete the construction, I do not believe I can testify very definitely on that. My recollection is quite clear; there was enough money there in the contract, but whether it was limited to $199 or whether it included this I can not say at this moment. Undoubtedly I knew at the time.

306 WILLIAM Z. WHITE, recalled by complainant.

Direct examination by Mr. LEE:

I testified that I was at New London during the receivership régime. I know the personal relations that existed between the receivers, Mr. Harwood and Mr. Conlin and the Groton Iron Works, during the receivership régime. They were very unfriendly. I have personal knowledge of an application made soon after the appointment of these receivers for their removal by the Groton Iron Works officials.

By Mr. LEE:

Q. What was that?

A. There was an application——

WITNESS (continuing). I was in court at the time this application for removal was made or asked. I was in New Haven at the time of the two-day hearing before Judge Maltbie in July of 1919. That contest took two days. The application for the removal of these two receivers was denied by Judge Maltbie. Following that denial of the court, the only communication to my knowledge that the receivers had with Groton Iron Works was a request that R. O. White, assistant treasurer of Groton Iron Works, be allowed to examine the claims filed against the receivership estate to prepare a list of the claims of $50 and under. I think that was in either August or September of 1919. Mr. White went up there. He was there about two days. I was with him all the time practically. He took a list of claims of $50 and under first, and then I believe he went on

307 up to $100. He did not take anything more; he did not take any other figures from the books of the Groton Iron Works.

He did not see the books of the Groton Iron Works. Not any official of the Groton Iron Works or any representative, as far as I know, ever saw the books or records of Groton Iron Works during this receivership period. They were in my possession. I received orders from the receivers not to allow any representative of the Groton Iron Works in the place nor access to any records. That was carried out at all times. The order was received upon my return from Hartford after the hearing for the removal of the receivers in July, 1919. There was not any change in this order. It continued right through the receivership. As to my or the receivers knowing anything about the negotiations of this March 26th contract prior to its conclusion I knew nothing personally about it; and Mr. Harwood, one of the receivers, told me he knew nothing about it until we withdrew in the latter part of March, 1920. We had no knowledge there was any contract being negotiated. From April 8, 1920,

to October 1, 1920, I was in the employ of the Fleet Corporation. I know as a matter of fact that the receivers of the Groton Iron Works did not from July, 1919, give the officials of the Groton Iron Works or their representatives any data or access to the books and records of the Groton Iron Works. I know they did not. From April, 1920, on I know that the Fleet Corporation did not pay directly to the vendors or manufacturers for any material and equipment used for ship-construction purposes. They did not up to some time in May, 1920. That is, between March 26, 1920, we will say, and the latter part of May no payments were made by the Fleet Corporation for any material or equipment direct to the vendors or manu-
308 facturers. I know from my personal knowledge absolutely the amount of ship creditors due at that time. The claims against the receivership estate amounted to approximately two and a quarter millions, which included what we will call ship-construction claims, which included, rather, two notes or a series of notes to the Equitable Trust Company and the First National Bank of Boston in the amount of $800,000. That was included in the two and a quarter million. Those were all ship-construction claims that were due and payable from Groton Iron Works at that time. They were all claims; yes, sir. At that time I had made some calculations as to the amount of money necessary to complete the ships that were pretty well done. I gave those figures to the Fleet Corporation. The amount of money that I calculated and gave to the Fleet Corporation representing the completion costs of these steel ships as of March 26, 1920, as I recall, was about $700,000. I calculated the completion cost in December, 1919. In September, 1919, they were calculated right along, month by month. I couldn't testify to what they were in September. Those are my figures in Exhibit 30, dated September 15, 1919. The statement I prepared on September 15, 1919, was an estimated total cost of the steel ships under construction on contract 57 S. C., which was the first contract, and the total that I show on that statement is $10,516,122.06. I might say it is impossible to tell from this statement how much money was needed. I knew money was needed from September 15th to complete the contract. I have testified that on March 26th my calculation of $700,000 was entered. I am not able to say how much in addi-
309 tion to that was required on September 15th, or approximately because these figures do not show. I could tell by referring to my records in the matter, but not from these exhibits. This exhibit was prepared to show as of September 15th what the total outgo of construction of these ships would be, how much money we expected to receive from the Fleet Corporation, and the estimated cost of

completion. I did make an estimated cost of completion in September. I recall it was much higher than $700,000, the one I made in March. How much higher I can not remember. On March 26 1920, I had personal knowledge of the claims that were being asserted against the Fleet Corporation by the Groton Iron Works and the receivers growing out of these steel-ship contracts. In defendant's Exhibit Y, I notice this item at the bottom of the page, "Due from E. F. Corporation $1,326,692." I know that figure did not include all claims of every sort of Groton Iron Works and the receivers, which were asserted at that time against the Fleet Corporation. I know there were other claims being asserted by Groton Iron Works for delays, neglect, interference, nonpayment of material, in addition to that amount. Yes; they were very large claims. Claims on the Noank yard running up into hundreds of thousands of dollars. Yes; running up into millions and not included in these. Now, then, in addition to that figure, there, of $1,300,000.00, there were claims growing out of the wood-ship contract. These were large in amount—approximately four to five hundred thousand dollars. These claims I have mentioned, these extra claims for delay and interference and damage and so forth, those are claims growing out of the steel-ship construction at Groton and out
310 of the Noank construction of the wood ships. Referring to Exhibit 30, there are some of those claims included in the $1,300,000, and there are also claims in the $1,300,000, cancellation claims that were not in existence on September 15, 1919. The cancellation award is in the $1,300,000, but not in here. There was no cancellation of this contract (57 S. C.). There was a cancellation award on this one (225 S. C.). That Exhibit 30 refers to the first steel contract which was completed. In addition to the $1,300,000 of claims that the receivers were asserting on March 26th, there was still a large amount of claims that I have described for interference and damages, material, and so forth, in the matter of wood damage claims on the wood ships, but the steel ships were taken care of in the $1,300,000. After March 26th the Fleet continued the payment of the Saturday night pay roll of the Groton Iron Works until the ships were completed. During the month of April they paid the pay roll every Saturday night. During the month of April, 1920, they paid one power bill of about $4,400.00 and that was all. Those were the only payments made by the Fleet in the month of April, 1920. Those payments were not made in any different form or fashion than they had been during the receivership. They were not made in any different form or fashion from payments made by the Fleet before that month and prior to the receivership. There was no stopping in the payment by the Fleet of pay rolls every Saturday

night from the inception of the ship construction—it went right along regardless of who was in control of the plant.

Mr. GIDDINGS. We introduce in evidence photostatic copy of Form E. This Form E was referred to in the letter of June 6, 1917, to Eads Johnson, signed Groton Iron Works, by C. W. Morse, and was spread at length on the minutes of the hearing of August 20, 1924, at page 35.

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(Received and marked "Complainant's Exhibit 31.")

Mr. PARMELEE. If your honor please, we have a certified copy of the public vouchers, dated May 31, 1917, a photostatic copy of that public voucher with the signatures is attached to and incorporated in Exhibit U. I would like to add to Exhibit U and have attached thereto this copy of this public voucher with its certification, because it shows a completed voucher.

(Received.)

HEARING: MAY 1ST, 1925. OFFICE OF THE SPECIAL MASTER, # 185 CHURCH ST., NEW HAVEN, CONNECTICUT

EDWARD E. BLODGETT, witness for complainant.

Direct examination by Mr. LEE:

My address is 1 Federal Street, Boston. I am engaged in the practice of law at Boston. The name of my firm is Blodgett, Jones, Burnham & Bingham. In March, 1920, I was consulted by Mr. C. W. Morse in reference to lifting the receivership at Groton Iron Works. I should say I was consulted first in February of that year. Following those conversations and towards the latter end of March, I went to New London and saw Mr. Marsh, representing the Fleet Corporation. I went down when the hearing was set before the court for the purpose of lifting the receivership, and I met Mr. Marsh at that time. I can not fix the date; the court record will show when that hearing was; I don't remember; I can fix the date when, during that hearing, we adjourned and I went down to Washington. I can fix that date if you have got that copy of that order; I think it was dated April the 2nd, or what was it? During the hearings in court when I was there with Mr. Marsh in reference to lifting the receivership it was adjourned and he and I went to Washington.

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The MASTER. Is this Mr. Marsh or Morse?

Mr. LEE. Arthur Marsh, representing the Fleet Corporation.

WITNESS (continuing). As I remember it, referring to exhibit dated April 2nd, we were in Washington on April 2, 1920, and we left New London on the night train to go to Washington from New London; that must have been April 1st. In Washington the next

day, April 2nd, I saw a number of men—Mr. Nottingham, Mr. Dean, Secretary Payne, Admiral Benson, Commissioner Scott. At that time the check for $250,000 had not been delivered to Groton Iron Works or myself or to the court at New London. That is the reason Mr. Marsh and I jumped on the train and went down to Washington. I talked with Mr. Marsh two or three times and asked him when it was coming. I had understood from Mr. Morse that he had the promise of the Shipping Board to advance the $250,000 which we needed in reference to lifting the receivership to pay the cash dividend that was to be paid to creditors under the receivership, and I asked Mr. Marsh every day that the hearing was going on—I don't know just how many days—if it was coming and
313 when it was coming. He said he understood it was to be there and it would be there, and it would be there the next day; and that kept going along for I think two or three days when the hearing was going on; I won't say how many days the hearing was going on; the court record will show; I can not remember. We went to Washington to speak to the Fleet Corporation officials about this check. I should have said that Mr. Marsh and I went in to Mr. Nottingham's office first when we first got there and then went up to the board room; I am not sure about speaking to Mr. Nottingham's office first, but I think we did; then we went up to the board room. Mr. Payne, Admiral Benson, and Commissioner Scott were there; I don't know whether Commissioner Stevens was there or not. To the best of my memory I stated that we had been going on with the hearing down there and that we had been promised $250,000 and it had not come and I had asked Mr. Marsh to go to Washington with me to find out where it was and to get it, because I had promised the court it would be forthcoming. Mr. Payne asked why it had not been sent, and I don't know whether Mr. Nottingham or Mr. Dean was there. Dean was general counsel of the Fleet Corporation. He said that the accounting officials said that they did not owe it, something to that effect. Mr. Payne asked if there was any difference in the accounts than there was when they passed the original order, and either the official or Mr. Dean or Mr. Nottingham said no, there was nothing different. Payne said, "Well, then, why hasn't it been sent?" Benson and Scott voted that there was no change and that a check should be delivered, should
be sent—given, and they instructed Mr. Marsh to draw a
314 resolution, which was done. This is the resolution, or a copy of it, Exhibit 28, drawn there that day and dictated by Mr. Marsh and then read over to me and passed. It is seeing the date on the resolution that refreshes my recollection as to the date on which we were there; that is the only way I could do it without

getting out my records, which I, of course, have not done. My recollection is that I was there on April 2nd, apparently so from the order, and that is the date absolutely. I did not see any check drawn. I did not receive any. Mr. Morse or any official for the Groton Iron Works did not receive any that I know of. If any was drawn it was given to Mr. Marsh; whether it was drawn that day, the check, or whether it was sent up to Mr. Marsh later, I don't know; it was never delivered to me; it was delivered through Mr. Marsh. I don't think the Groton Iron Works officials ever touched the check or saw it. We then went back to the courthouse. My memory is we adjourned on Thursday over until Monday in court. I understand from the calendar the resolution was passed on Friday—it was April 2nd according to the date. I went back that night to New London, and went out to see the judge who was trying the case—I can not think of his name now—at his house, and showed him the resolution; Mr. Marsh, my memory is, went with me. I do not remember Mr. Marsh's having the check there. I can only say this: Sometimes in February, or perhaps early in March, Mr. Morse telephoned me in Boston and asked me if I would undertake for him the lifting of the receivership, and I told him I would undertake it if I saw any chance of lifting it, and asked what his plan was, and he said he was going to try to get the creditors to take notes; then I said, "I will not undertake it unless there is some cash payment, because I know the creditors won't accept notes and then let it go along." I happened to know some of the committee of creditors and I knew their position in the matter pretty well. I had been somewhat in touch with the Groton affairs. Mr. Morse then said that he thought he could raise enough to pay a dividend of ten per cent; I said, "If you can do that and get it through I think I can get the receivership lifted." And he said he would let me know, and some time, I should say a couple of weeks later, he telephoned and said the Shipping Board, Fleet Corporation—I don't know which he said—had agreed to loan him $250,000 which would pay ten per cent, and I said, when he told me that, "I will go ahead and undertake to lift the receivership for you." I should have said the second conversation was about the middle of March. I did not see that resolution of the Fleet Corporation until you showed it to me. Mr. Morse told me they had agreed to advance $250,000.

The Special Master. Mr. Lee, in showing the witness and saying, "Did you ever see that," you referred to Exhibit 27?

Mr. Lee. Yes.

Witness (continuing). It is marked 27. I should have said my first conversation with Morse was about two weeks before that, the latter part of February or the first of March; I may be wrong in

that; it was some time before it anyway. As to Exhibit 26, a copy of a letter from Mr. Scott, whether I have even seen it and whether it was read to the creditors of the Groton Iron Works at the meeting in court, in conference there at any of the court hearings, I should say that I saw it at those court proceedings down in Connecti-
316 cut. I would not say that I recall the letter's having been read to the creditors in court, I do not remember; I should say it was read in the court to the judge; I do not remember its being read particularly to the creditors, but, of course, the creditors were there in court; my memory is that it was read in court. At the time of our conference in Washington on April 2nd this March 26th contract had not been signed by the Fleet Corporation so far as I know. I had nothing to do with the negotiations regarding the price figures mentioned in this March 26th contract. There were no negotiations that I was present at or had anything to do with in reference to the prices in that March 26th contract; I was present when the March 26th contract was drafted in New York at the Fleet Corporation office by Mr. McCormack and Mr. Marsh and Mr. Burditt, George W. Burditt. There was an accountant there but I don't remember his name. I should say Eason was the name, but I won't be sure of that; there was no discussion of figures at that time at all; they simply discussed the wording of certain clauses in the contract. As for discussing with Mr. Eason or Mr. Marsh or any of the Fleet representatives present the matter of this ship hull and bill of material that is referred to in this contract, I simply asked when we were going to get them because I had understood that Mr. Morse could sell them for about seven hundred or seven hundred and fifty thousand dollars at that time.

Until the time that our firm and Mr. Robinson entered suit against the Fleet Corporation I did not do any work for them at all; I knew that Burditt was going down to the plant in New London; he came up from New York and took charge of things for Mr. Morse, and from him I learned that the Fleet Corporation tried to put
317 them back into receivership again; I had nothing to do with that part of it at all. We did confer with them generally about the claims against the Fleet Corporation being gotten together that were finally made the subject of the suit in which our firm appeared. Before suit was brought we conferred with them, of course, and went over it. A suit was brought with our firm and Robinson and Robinson of Connecticut as attorneys asking for thirteen million dollars, and a declaration was made up—if you call it a declaration—I don't know what you call it down here.

The SPECIAL MASTER. Complaint.

WITNESS (continuing). Complaints were made up by us in conjunction with Mr. Robinson; in fact, Mr. Burnham, my partner,

id more of the detail than I did on that part of it, and Mr. Burditt, and the information on which that was drawn was based n Mr. Burditt's information that he gave us and what he had done nd what had been done that we personally did not know about. bout negotiating the subsequent advance or loan from the Fleet Corporation the latter part of April of approximately a million ollars, I know that negotiations were had, but I did not have nything to do with them except that I was asked in reference Virginia's giving a guarantee on the basis of which I understood loan was to be made; that is all I had to do with it; I had othing to do with negotiations for the money. About Groton ron Works receiving any of the payments and considerations re- erred to in this March 26th contract, so far as I know they did ot ever receive a cent. I think I should have known it if they ever received any; of course this $250,000 came up and was deposited by Marsh in court, and I don't think that ever went to the company; I don't think that ever passed through he company's books at all.

The SPECIAL MASTER. May I ask, Mr. Lee, just for the record, the esolution which was adopted on April 2nd at Washington, have ou introduced that? Is that an exhibit?

Mr. LEE. Yes; that was marked, your honor, "Exhibit 28."

Cross-examination by Mr. PARMELEE:

WITNESS (continuing). I returned to New London from Wash- ngton with Mr. Marsh and went out to see Judge Kellogg; and think that is the time we went out to Judge Kellogg's house nd reported what we had done; I won't be sure on that. This aper you show me shows, as I remember now, that I did endorse ne of those checks that is spoken of there. That April 3rd check or $250,000 was all applied to the purpose of lifting the receiver- hip. I did not intend in my testimony to be understood as say- ng that it was not applied to that. I was not in touch with the hipbuilding program at Groton for the period following the Iarch 26 contract except that I do know that the pay rolls were dvanced by the Government after that, just the same as before. do not know how long, I never knew how long, they had been dvanced by the Government before that. The pay rolls were con- nued to be advanced just the same as they had been before the ontract. I never knew that the million dollars was paid to them. s to what further payments were called for under the contract f March 26th—the particular thing I had in mind was the question of turning over to Mr. Morse the wooden hulls and the bill of material. I knew that there was some negotiation for a considerable amount. You speak of a million dollars and

it has refreshed my recollection; I think that is the sum that I was told they were making application for and they were to give—they spoke to me about the question of giving a guarantee of the Virginia Company for that loan. As for there having been a substitution of this one million-dollar advance under the provisions of the contract for the delivery of wooden hulls and bill of material, I never heard of its being in substitution, I can say that; that's all; I never understood it was in substitution. It does not seem to me I would have asked a number of times about its being delivered if I had understood at the time that there was a million-dollar loan in substitution of it. I do not know about the million-dollar transaction; I can not answer that question. When I speak of having acted with Messrs. Robinson and Robinson in Hartford, that was the institution of this precise suit that I am now testifying in. I assume so. I could not tell you offhand how that was brought; I know it was brought in one way and then it was changed over. During the early stages of this litigation I was actively of counsel for the complainant here. I do not think I am still of counsel for the complainant in this case. We have never appeared for the trustee so far as I know. And the trustee was, I suppose, substituted for the complainant. We represented only the Groton Iron Works prior to the appointment of the trustee; that's all. I have looked over Exhibit X—the hearing report—and I see that the record puts down my name as being present. I can not say whether I was present or not; I have no memory in reference
320 to it at all. This was not the meeting I have spoken about. This conference report hearing was prior to that. I distinctly remember what I have testified to in reference to that meeting on April 2nd, and I was refreshed in that date by the resolution which was put in, but this hearing on March 30th is not the one I have testified about at all, and my memory is I should say that I was not present on the 30th of March; my memory is that I would be in court in New London on that date; at least, whether it is or not, I don't remember being present at that hearing. I have not read the transcript of Mr. Gordon's testimony relative to that meeting. This is the only thing I have read, a copy of this that you handed me. I have glanced over Exhibit X, and heard you read from Mr. Gordon's testimony in this case about my being present at this Washington conference of March 30 and the stenographer's error in attributing my remarks to him. I can only say, as I told you a minute ago, I have no distinct memory of being in Washington in reference to the Groton Iron Works except on the one occasion, which, as I say, it seems to me is absolutely fixed on April 2nd, the day that resolution was drawn. That

particularly impressed itself on my memory because I had been unable to get any word at court as to when this money was coming, and I had promised the judge that it was coming; it was the basis of our petition, and I told Mr. Marsh I wanted to make good or find out why I am not going to make good, and we went down to Washington on the night train. At the conference I have in mind—I do not think Colonel Abadie was present—someone was present from the accountants' department, but I do not think it was
Colonel Abadie, because I think we were told that Colonel
921 Abadie was away. The conference I recollect and am testifying to took place in the Washington office; I don't know; it was up in the board room, as they call it, I think; if I remember rightly the Fleet Corporation had most of their offices at that time in Philadelphia; their principal work office was in Philadelphia at that time; and my memory on that is because of the fact that I had been acting for the Atlantic Corporation and all our meetings practically were up in Philadelphia. Now whether they had been moved from Philadelphia by the time of this conference I do not know. Mr. Nottingham will remember better than I on that. The only ones I remember particularly as being present were Admiral Benson, Mr. Scott, Mr. Payne, Mr. Dean, Mr. Nottingham, and some one or two men from the accountants' department; outside of Marsh, myself, and C. W. Morse, those are the only ones I particularly remember as being present, but I do particularly remember those men being present, and I remember Mr. Dean and Mr. Nottingham being present.

Direct examination by Mr. LEE:

WITNESS (continuing). I do not say that I was not present at this March 30th conference, but it seems rather incredible to me that I could have been down there on March 30th and been in court up in New London before Judge Kellogg at the same time; I do not know when those hearings began down there; if you have got any record that shows that, it would straighten me out. I won't say that I was not there unless the days that I was in court up in Connecticut contradict this; if they do still show those days in court in Connecticut are correct, and that I was not there, irrespective of any
record, but I can not say, outside of fixing the date that way,
922 I can not say that I was not there as this purports to say that
I was there. The dates six years ago are quite uncertain in my mind.

Cross-examination by Mr. PARMELEE:

WITNESS (continuing). It is my recollection that I was in New London on two separate dates with an interval between in which

I went to Washington. I left New London or Hartford, whichever the court was sitting in—my memory is it was New London—and went down; we adjourned court because we did not have the money to go ahead, and I asked him to adjourn and we said we would go down to Washington that night; I know Mr. Marsh said, when he got this resolution, he said, "Well, I guess I have got something that no one has ever got before." After seeing this letter of April 3, 1920, and the other letter you showed me of Mr. Marsh's, that we did come right back and the matter was put through on the 3rd of April, and I should say we went out to Judge Kellogg's to get him to sign the final decree at that time, but I have a distinct recollection of going out somewhere to get Judge Kellogg at his house. As for the memorandum dated April 1st, 1920, to E. A. Abadie, controller, Groton Iron Works, signed by Mr. Nottingham, including a copy of a telegram from Arthur Marsh you showed me as I remember it, everything was in shape on April 1st; we did not get the check for $250,000 and that it was for that reason that I said to Mr. Marsh we would go to Washington at night and see what the trouble is. I am not clear whether I was in Washington on the 30th of March. I do not think I could have been, because the 30th of March was just two days before this; and I think
323 we were on the hearing in Hartford at that time; I think you will find that the court record will show so if you look it up. You know the Shipping Board and Fleet Corporation have made a good many mistakes in their records and everything else, but it does not seem possible that I would be down there on the 30th and go back again on the night of the first without remembering it. It is possible that I was in court in New London on March 26th instead of March 30th; I can not tell; I don't remember Mr. Parmelee, and the court record will show just what date that case was on trial. Mr. Marsh's sending that telegram just referred to in the letter to Nottingham was really sent at my suggestion that I wanted to know where that money was; I was insisting on finding out where that money was and when it was coming. I think Mr. Coogan was with us in New York in drawing that March 26th contract; I think I remember his name and meeting him.

Mr. PARMELEE. I offer in evidence a memorandum to E. A. Abadie, dated April 1st, 1920, signed by W. W. Nottingham, assistant counsel; a letter from Mr. Marsh to Coogan, dated New London, April 3rd, 1920; also a letter from Mr. Marsh dated New London, April 3rd, 1920, to W. W. Nottingham, assistant counsel, and ask that they be marked as an exhibit, being the letters shown to Mr. Blodgett.

(Received and marked "Exhibit Z.")

WITNESS (continuing). I do not recollect Mr. Benjamin Barbour, one of the counsel in the New York office of the Shipping Board,

being with Mr. McCormack and others to draft that contract
924 in New York—I have no memory of it at all. It is possible that he may have attended that conference rather than Mr. Eason; I won't say; I do not say surely Mr. Eason was there. If your records indicate that it was Mr. Barbour instead of Mr. Eason, your record is undoubtedly right. I will take your record.

Redirect examination by Mr. LEE:

WITNESS (continuing). Referring to this letter of April 3rd about which I was questioned—contained in Exhibit Z—there was a check presented to me in connection with $41,663.56 to my order, and that is one that I apparently endorsed at that date. That is the only one I remember endorsing; I had forgotten all about that until this letter was shown to me. I did not have the slightest thing to do with the handling of this $250,000. This bond referred to on the second page of this letter was executed by Mr. Marsh in connection with the payment of this $250,000; it was signed at that time, down there by Mr. Morse and Mr. Guggenheimer, as a condition of the delivery by Mr. Marsh of this $250,000 to the court. I was employed by Mr. Charles H. Tyler in behalf of the Atlantic Corporation to assist them in reference to getting their contract with the Fleet Corporation readjusted. I have my recollection of the tonnage price in that contract that the Fleet agreed to pay the Atlantic Corporation.

Q. What was the tonnage price?

Objected to.

The SPECIAL MASTER. Admitted.

Exception by defendant.

WITNESS (continuing). The price, as I recollect it, was two hundred and four dollars a ton. There is nothing further in con-
925 nection with these matters that I have been interrogated about that I recall that I have been cut off from saying, or that I wish to say that I have in mind.

WILLIAM W. NOTTINGHAM recalled.

Cross-examination by Mr. LEE:

Referring to the Atlantic Corporation contract with the Fleet, I did not have anything directly to do with that. Mr. McCormack drew that contract, and I think I read it over afterwards, but I did not pass on it or have any part in the actual negotiations as I recall it. It was a settlement contract between the Fleet and the Atlantic Corporation. If I remember correctly it was made some time prior to March 26, 1920; I thought it was made in—towards either the end of the previous year of 1919 or in the early part of 1920; I do not

recall the date; I am certain it had been made some months prior to this one. I have seen a copy of it. I have not got a copy of it with me. I could and will produce one from Washington.

Q. Is it your recollection that the tonnage price paid by the Fleet to the Atlantic Corporation under that contract was two hundred and four dollars a ton?

Mr. PARMELEE. I object for the same reasons advanced when the matter was brought up in Mr. Blodgett's testimony.

The WITNESS. I will just simply state I can not tell you, but I think two hundred and four is the figure; whether that is or not I do not know; I have not seen a copy of that contract for two or
326 three years; it has been that long since I have seen it.

Mr. LEE. I will ask counsel if he will produce the contract.

Mr. PARMELEE. I will produce it, reserving our right to object to its relevancy and materiality.

Q. Did the Fleet Corporation cancel any of the steel ships that were ordered built by the Atlantic Corporation?

Mr. PARMELEE. That is objected to for the further reason that it is not germaine to the direct. If counsel call Mr. Nottingham as their own witness, I will withdraw the objection to its being improper cross-examination, but wish to reiterate my objection because of its immateriality and irrelevancy.

The SPECIAL MASTER. Mr. Nottingham is your witness; you produced Mr. Nottingham and he is now on cross-examination?

Mr. PARMELEE. Yes; he is now on cross-examination.

Mr. LEE. May I ask it as part of my direct case, your honor?

(The witness is examined by Mr. Lee as his own witness.)

WITNESS (continuing). It is my recollection the Fleet Corporation did cancel some of the steel ships that they had ordered under ship construction contract from the Atlantic Corporation. I can not give you the number.

Cross-examination by Mr. PARMELEE:

WITNESS (continuing). As to there being in the Atlantic
327 contract an item of depreciation of plant. I can not say offhand; I would have to examine this contract before I could really give you the details as to that. The situations of the Atlantic and the Groton were not in all respects identical.

Cross-examination by Mr. LEE:

WITNESS (continuing). At the time of the negotiation of this March 26th contract, about which I have testified, there was considerable opposition to the making of the contract on the part of some of the Fleet representatives and officials. That continued right up to the time it was signed. As to its increasing after the contract was

gned, I do not know about that particularly. There were objections certain officials of the Fleet prior to the contract being entered o; they did not think it was an advantageous contract to the Fleet rporation. After the resolution of March 12th, and even after Groton Iron Works had executed this contract, there was opposi- n on the part of some of the officials of the Fleet Corporation or presentatives still to the Fleet Company's entering into it. There re hearings or conferences nearly every day for several days after rch 26th between Fleet officials themselves in reference to this tract. There were several conferences; yes. It was not a question to whether the Fleet should sign or not. There were certain presentatives of the Fleet who were recommending against the sign- but there was no actual meeting of the board of trustees of the et Corporation until the one of March 30th. This discussion ween the representatives, whether official or unofficial, was still going on, as to the execution of it, up until the 30th of March; the discussions after the 30th of March were, I think, with reference to other matters. As to my not knowing the date Fleet actually signed this contract—I know this: That the con- t was prepared on the 25th day of March in New York. I took it rn to Washington the night of the 25th and telegraphed and ed that somebody remain in the office to sign it, and it is my im- ssion that the Fleet signed it on that day, but that the delivery t was withheld due to the request of certain officials of the Fleet poration and it was not delivered, but was signed on that day; is my recollection. It was, I think, delivered on April 2nd. It delivered by Mr. Marsh. Well, I think in all probability that Marsh did actually deliver it on April 3rd; the papers were ed over to him to consummate the transaction on April 3rd. I not recall that there was particular opposition on the part of Fleet up to April 2, 1920, to this payment of $250,000; there were ain things to be performed that had to be done before the $250,000 paid, and the controller was insisting on a strict compliance with y condition of the contract before he would deliver it. They ered it when all the conditions had been performed; it involves question of payment of the receivers' note, receivers' certificate, certain other matters as I understand it that was all finally com- d on a certain date. I don't know whether Colonel Abadie sed to draw this check. I know I directed him and asked him to the check. As to my knowing he didn't, and that somebody else drew it, I don't know who drew the check; I can not say with- out looking at it. Well, Abadie would naturally not draw the check because Abadie was the controller; Mr. Tweedale I think

in all probability drew the check. I couldn't say that Colonel Abadie refused to approve or order this check drawn because I do not see that he could direct the treasurer; the treasurer is the man that draws the checks. I don't recall that soon after the check was given to Mr. Marsh steps were taken by the Fleet Corporation to stop its payment and to recall it—not that I know of. I think I was present at the Walsh investigation on April 24th, 1920, when Mr. Dean testified; I am not certain. Yes; I think Dean and I testified some day, if I remember rightly. That was on April 24th, 1920. As for my recalling his testifying that, "I might also add that we have taken steps to stop the payment of the $250,000 to other creditors and the money is still where we can hold it." What date was that? April 24th, 1920 [witness takes book]. Wait a minute; now wait a minute. I think Mr. Dean is mistaken in that testimony right there because the check had been paid before that time. Well the check had been delivered to Mr. Marsh, and been turned over to the other people to pay it, is my understanding. To the court, that is the way I understood it; was turned over to the receivers, who retained it for the purpose of liquidating these creditors' claims. As to whether that is what Mr. Dean testified, I don't know; I should have to look over it [examining book]. Only from seeing it there I presume it is correct. I have no memory on the subject other than what I see in your stenographic report of that hearing. As to that refreshing my recollection as to what he said then, it does not. I would not remember what Mr. Dean said at that hearing.

330 The SPECIAL MASTER. Showing a book, what book are you referring to?

Mr. LEE. I show him the printed copy of the Washington Government Printing Office, 1921, of the stenographer's minutes of the hearings before the selected committee of the United States Shipping Board operation, House of Representatives, 66 Congress, 3rd Section, Parts 1–14, at page 1183.

Q. Isn't it a fact, Mr. Nottingham, that the Fleet Corporation regarded the March 26th contract on that date—about April 24th—as practically cancelled?

Objected to.

WITNESS (continuing). No; it was not cancelled. I was present when Mr. Dean testified; yes. My attention is called to a statement of his at page 1183. "We," referring to the board, the Fleet Corporation board, apparently, "have now practically cancelled the contract of March 26th and are proceeding to ask for the reinstatement of the two receivers and propose to go on with the work"; it does not refresh my recollection to the extent of recalling that the Fleet board had practically cancelled the contract; the board has directed

at application be made for the reinstatement of the receivers, and e reason for the application was that the Groton Iron Works was t performing its obligations under the contract. Mr. Dean was neral counsel of the Fleet Corporation. I was associate counsel it. As for that refreshing my recollection that Mr. Dean stated at the Fleet Corporation on that day had practically cancelled this March 26th contract, I think he was just making reckless state- l ments; that's what I think about it. He was my superior, and what he knew about the Groton Iron Works didn't amount to ything because he never had any real contact with the matter to nount to anything. He opposed the making of the March 26th ntract on somebody else's recommendation. He did not act always my recommendation. It was on anybody's recommendation in the gal department that recommended that to him.

Mr. LEE. I offer in evidence this excerpt from the official minutes the Walsh investigating committee record, the Government record; e have introduced them before here, page 1183, and with your per- ssion I will substitute a copy of that, subject to correction and amination of it, the testimony of Mr. Dean, general counsel of e Shipping Board, as an admission.

Objected to.

WITNESS (continuing). Prior to the execution of the March 26th ntract the receivers of the Groton Iron Works had made a claim ainst the Fleet Corporation, covering the cancellation by the Fleet the last three steel vessels. I think somewhere in the neighbor- od of a million dollars is my present recollection of it. It may true it was one million two hundred and fifty thousand. I can fresh my recollection by referring to the record.

Mr. LEE. The witness is shown the minutes of the Walsh investiga- n committee of Congress, page 1170.

WITNESS (continuing). Where is the particular place you are ferring to? 1170. That refreshes my recollection of the amount. I stated there that their counsel had claimed about a ? million two hundred and fifty thousand dollars for cancella- tion; of steel ships; yes. And some further sum for the can- lation of the wooden ships by the Fleet. I testified, before the lsh investigation, and it was the fact, that the Groton Iron Works s claiming that the original receivership was induced by the lure of the Fleet Corporation to pay the claims that Groton erted was due them. I am familiar with the bill of complaint in Virginia suit. In an action by the United States of America inst the Virginia Ship Building Corporation as to my having had ething to do with the drawing of the bill of complaint, I read ver before it was filed, yes; and I furnished some of the informa-

tion for it. No, as a lawyer I did not frame the allegations; I turned the data that I had over in memorandum form to Mr. Henry M. Ward, who drafted that, I think, practically in its entirety. My name is on it (the complaint) as special assistant. I was special assistant in the case. It was made in December, 1921. And in that bill of complaint it is charged that this March 26th contract was entered into by Groton and others as part of a scheme and conspiracy to defraud the United States. Groton Iron Works went into receivership in Connecticut, as I understand it, in the State court, the original receivers. I am not certain as to whether there was any receivership in Maine or not. I couldn't say whether they went into receivership in Maine and the Connecticut receivers were ancillary receivers; I don't recall; I remember there was some question that I think was up before the Walsh committee as to whether or not there had ever been a receivership of the company in Maine
333 and whether there was or not, I am not certain. There was a question discussed whether or not the Groton Iron Works could execute this (March 26, 1920) contract while in receivership. There was a question raised in the Walsh committee on that question, but, as I understand it, the Groton was to become a party when the receivers were dismissed; it was a peculiar order there; the receivers were discharged as to certain matters and retained as to certain others, and the assets were turned back to the Groton Iron Works. As to Groton Iron Works not being a party to this contract until after the receivership was lifted, the contract became effective when the final decree of the court was entered. I don't know when Groton Iron Works signed it; I presume they did sign it before the receivership ended. The exact date I do not say, but I think they signed it up here in Connecticut; I am not absolutely certain. I do not know the exact date; I can not tell you to save my neck. As to whether it was before the receivership was lifted, I do not know; I wasn't there. As to seeing it after it was signed I have Mr. Marsh's letter transmitting them there.

Redirect examination by Mr. PARMELEE:

WITNESS (continuing). I have a telegram to Arthur Marsh, signed by me dated March 30th, 1920; a letter from me to the general comptroller, Groton Iron Works, contract March 31st, 1921; a letter from E. A. Abadie, general comptroller, dated April 1st, 1920, addressed to general counsel, attention Mr. W. W. Nottingham, Groton Iron Works. These are true copies of the papers they purport to be taken from our own files.

334 Mr. PARMELEE. I offer them in evidence as a single exhibit.

Mr. LEE. I object to those as incompetent, immaterial, and irrelevant, that it seems to be an interoffice memorandum, and has no

bearing or relevancy or materiality as binding on the complainant here.

The SPECIAL MASTER. They may be marked "Defendant's AA for Identification."

Q. What did you do to expedite the payment of the $250,000 which was to be paid to Groton's creditors to lift the receivership?

Objected to as immaterial.

Admitted.

Exception by complainant.

WITNESS (continuing). Why, at the close of the meeting of the board on March 30th I was instructed to do whatever I could to expedite it, and I did; I immediately notified the comptroller and asked him to prepare a voucher and have the check issued on that voucher and get it up to Mr. Marsh, who was in New London, Connecticut. I telegraphed Mr. Marsh on March 30th, 1920. I instructed the general comptroller in writing on March 31st to issue the voucher. I received a letter from Mr. Abadie, the general comptroller on April 1st. In response to my request to prepare the voucher, I think, and the telegram and the two letters referred to are these marked "Exhibit AA for Identification."

Q. Mr. Nottingham, whether or not there was any delay in paying the two hundred and fifty thousand dollars due, to determine whether Mr. Morse had carried out his part of the agreement?

333 Objected to.

Admitted

Exception by complaint

The WITNESS. There were certain complications that arose in connection with the payment of the receivers' certificates and also the substitution of the bond of Messrs. Morse and Guggenheimer for certain obligations that caused some delay in the final delivery of the $250,000 check.

Recross-examination by Mr. LEE.

WITNESS (continuing). On April 3rd, in addition to paying the receivers' fees and expenses and so forth that Groton was to pay or Mr. Morse was to pay, the Fleet was not insisting upon a bond. That bond, if I remember correctly, was taken in lieu of some money that they should have paid in cash; it was a waiver of a condition by us, and if we had stood strictly on the contract and wanted to make them come right down to the finish we could have made them pay cash for it and not taken the bond. There is nothing in the March 26th contract about Morse or anybody else providing a bond. No; not a thing. On March 30th I think we were advised by Mr. Morse and his counsel that everything had been done by them, their providing their portion of the money to go

ahead, to entitled them to have the Fleet pay this $250,000. Counsel said referring to Exhibit X—that "After our conference"—the March conference I think—"and getting the proposition that we would have a fund of $250,000 put up to pay twenty per cent on the dollar we figured that Mr. Morse would have to raise $200,000 or $250,000 more to clean up the receivers' certificates and take
336 the claims and he has made his arrangements to have that money." Yes; he (Mr. Morse) made his arrangements to have it. Then counsel again stated below here: "That notice was sent to all creditors and the hearing adjourned for a week; we secured the assent of all creditors except one and that we disposed of as being worked out, and Mr. Marsh was waiting in the judge's office that day and got a wire from Mr. Nottingham, and he came in and he stated to the judge that the contract had been drawn by our consel and sent down to be signed here, having been held up in the auditor's department." That is absolutely correct, and, further, "That the contract would be signed and the money forthcoming Tuesday. Court then adjourned until Wednesday, asking Mr. Marsh if he was sure." Yes, that is correct. I said (at this conference)—interposing—"We didn't say anything about signing; we said we would have action Tuesday." Yes, I said that, and that was true. Then, after that, on March 30th, there was a discussion between Admiral Benson, Colonel Abadie, and the others as to whether or not the Fleet ought to advance that $250,000. The board was still undecided whether they would or not on March 30th. The delivery of the contract had been held up, and this was at a meeting held to determine whether or not the contract should be delivered; that is what the purpose of the meeting was. The officials of the Fleet Corporation were still debating whether or not they should carry out that contract. They were debating until the end of this meeting; that is what this meeting was for, to determine what should be done by the Fleet Corporation, and that was the argument on both sides of the question which resulted in the board's action. And after that
337 the delivery of the contract at least was held up until April 3rd. It was authorized on March 30th and actually and finally delivered on April 3rd; yes. As to whether the contract was authorized on March 30th, I don't know as there is anything particular in this; this is a verbatim—not the resolution of the board you have here; there was in all probability a resolution; I am not absolutely certain; but this (Exhibit X) is a verbatim of the proceedings. The only resolution following that debate of the Fleet officials as to whether or not they should enter into it that I know of is, it says here, "Mr. Chairman Fisk. It is moved and seconded that we consummate this trade with the Morse people and

all in favor say aye. And motion carried." It is right in the minutes. As to there being a resolution drawn there, that is the resolution right there; it is a motion; there was no formal resolution drawn. After the motion was passed counsel for the Groton Iron Works asked whether the check for $250,000 would be available for use in court tomorrow. Mr. Scott did say for him to get in touch with me. I did not raise any question at that conference about any point of details or other points that would prevent our delivering that check as I was requested to do. No; I had the contract before me; I knew what the contract provided for. As for these things arising in my mind after March 30th they arose when the check was taken up there; the check was to be delivered on certain conditions, and Mr. Marsh was subsequently authorized by the board to decide whether the Groton Iron Works had complied with those conditions. On April 2nd, when Mr. Blodgett came down there, at that time I had not succeeded in getting the check. I do not recall that I was present at any meeting that
338 Commissioner Payne ordered a check drawn. If I remember that conference, the check was drawn in New York or sent to New York by our disburser—through our disbursing officer there—and this conference was held to authorize Mr. Marsh to go up there and decide finally whether or not the conditions had been complied with and whether the check should be delivered. As to my saying anything to Mr. Payne when he inquired why this check had not been delivered on April 2nd about any conditions on the part of the Groton Iron Works or Morse having not been fulfilled, I think, if I remember correctly, that the question was then raised that there were certain items for receivers' certificates and other matters that had to be met before the check would be delivered. As to its being a fact, as Mr. Blodgett has testified, or beyond my knowledge, that Mr. Payne directed Marsh then and there to draw this resolution and that it was drawn as shown by Exhibit 28, do not think Mr. Payne had anything to do with the drawing of this; I think Mr. Thomas A. Scott directed Mr. Marsh to draw this resolution and then he presented it to the Shipping Board; this was an arrangement made by Scott and Marsh, and then Scott took this into the meeting and had it adopted. I was in Mr. Scott's office when he talked with Mr. Marsh on this subject, yes.

Mr. PARMELEE. Mr. Lee you are referring now to exhibit what?
The SPECIAL MASTER. Twenty-eight.

Redirect-examination of Mr. PARMELEE:

WITNESS (continuing). The United States in their Virginia suit charged conspiracy to defraud the Government. And in the gen-

eral charge of conspiracy I think all of the contracts were re-
339 cited, as well as the Groton contract of March 26th—I think it says—yes, I know there is several others besides the March 26th referred to there, and all referred to as part of a scheme to defraud. Yes; there are some half a dozen contracts pleaded there.

Recross-examination by Mr. LEE.

WITNESS (continuing). As to what other contract is referred to in paragraph 6 of the bill I don't know; I didn't say anything about forty-six; I said in the bill. In paragraph 42 (Virginia bill of complaint) it says that the March 26th contract was part of a conspiracy to defraud. It does say it was part of a conspiracy; yes. As to its mentioning no other contract, the March 26th is incorporated I think as supplementing the original construction contract, to supplement them. I am not quibbling a little.

Motion to strike out the question.

WITNESS (continuing). I am reading what the contract says. The paragraph that I read—and that I now look at in this bill of complaint—does not refer to any other contract than the March 26th contract 1920—as it only mentions in actual words the contract of March 26th; that's all.

Redirect examination by Mr. PARMELEE.

WITNESS (continuing). I have examined defendant's Exhibit X. That is a correct report of the proceedings at the meeting therein indicated to the best of my recollection. I was present during this meeting, as indicated in the report.

Recross-examination by Mr. LEE.

WITNESS (continuing). There may be typographical errors
340 in that and the stenographer may have made some errors in it; I don't know; only that I have taken it up with the stenographer and he has certified it as a true copy of his minutes; that's all I know. I understand now where it says "Mr. Morse" it clearly means "Mr. Marsh." Let me see the original. I have been using my copy; I better use the original. For instance, in the original the typewriting is "Mr. Morse" in several places on page 7, and it has been crossed out, and initialed by the stenographer himself and changed to "Marsh." That occurs twice on that page and the "Marsh" written in in ink and the typewritten word is wrong. He did not write that, only the other day I will tell you how that happened. When they take those notes, the reporter dictates those notes into a dictaphone or dictograph and they are transcribed by the typist and then checked by the reporter against his notes, and the corrections are corrected by the stenographer himself from his notes and correcting the errors of the typist who transcribed the record.

I heard Mr. Blodgett's testimony this morning that he did not know whether he was there or not. My recollection is that Mr. Blodgett was there; there isn't any question about it. There was also present Mr. Gordon, Mr. Burditt, and Mr. Charles W. Morse and for the Fleet Corporation Mr. Benson, Mr. Scott, Mr. Payne, Mr. Abadie, and myself and Mr. Dean. I won't be certain whether there was anybody else; or whether Commissioner Stevens was there at that meeting or not; I think he was, but I am not absolutely certain. I don't know whether anybody else was there. It has been a long time ago. I have recollection of exactly what happened there; except as I refer to the stenographer's minutes, I have had other
341 indications of exactly what happened there; I was at the meeting and I worked on the contract and then worked on the details of it and that, together with other office memoranda that was there. As for my not knowing if I was at the conference of April 2, I told you I was there on April 2nd. I gave you my recollection of it. As for my remembering Mr. Blodgett's asking Mr. Payne about the check not being received, I told you that there was discussion about the check. I told you that I was there, this morning. I do not recall Mr. Dean saying that the reason it had not been paid was that, as Mr. Blodgett has testified, the Fleet did not owe it; that Groton owed the Fleet. My recollection is now that I was at that conference on April 2d.

WILLIAM Z. WHITE, recalled.

Direct examination of Mr. LEE:

Q. Referring to Exhibit 24, do you know whether the item in there of pay roll advanced $101,606 was included in the million-dollar advance which was made along the latter part of April by the Fleet Corporation to Groton?

WITNESS (continuing). It is my understanding that the $101,000 was charged by the Fleet Corporation as a first item against the so-called million-dollar fund, advanced in April, 1920. About these claims: Mr. Nottingham has testified correctly that the receivers were asserting, prior to March 26th, 1920, claims for the cancellation of steel ships amounting to $1,250,000 besides a claim for the cancellation of wooden ships. Now, quite apart from those two, I have under instructions made an examination of the books and
342 records and papers of the Groton Iron Works to ascertain whether or not there is an amount due Groton Iron Works under these elastic provisions of the contract and other claims beyond the amount provided in the March 26th contract. I am able to say whether there is an amount due the Groton Iron Works under these contracts in addition to the amount provided by the March 26th contract.

The SPECIAL MASTER. Why don't you ask him, Mr. Lee, if he can tell the amount of claims existing at that time when the March 26th contract was entered into? I will admit that question.

Mr. LEE. All right.

Q. Will you answer that question roughly as just phrased?

Mr. PARMELEE. If your honor will give me an exception?

Exception by defendant.

WITNESS (continuing). On the first contract, contract No. 57—that is, the first steel contract for six ships—the claims amounted to $3,060,000 over and above the original contract price of $155 a dead-weight ton. On the second contract the claims amounted to $2,800,000 over and above the contract price of $182 a dead-weight ton, and that figure of $2,800,000 includes credits to be received from the Fleet Corporation for all surplus materials returned. That does not include any claims of Groton on the wooedn-ship contracts.

Q. Do you know the amount of those?

Mr. PARMELEE. The same objection.

The MASTER. The same ruling.

Exception by defendant.

343 WITNESS (continuing). On the wood-ship contracts the claims would amount to approximately $1,860,000 over and above the adjusted contract price under the September 30th, 1918, agreement. As to whether these include any other claims for interference or delay and losses through the actions of the Fleet Corporation, the figure which I just testified to on the wood contract, fifteen W. H., include an item of $884,000 for delay, reasonable use of ways from suspension to cancellation, and other items of similar nature. The items on the two steel contracts do not include any such items for Governmental interferences or similar claims, but do include a cancellation. Those figures on the steel contract do not include any figures for depreciation of plant. It includes about nine hundred and fifty thousand dollars for material taken, but not any claims for interference and delays of the Fleet Corporation. There are, I know personally, such claims as those asserted by Groton Iron Works. I do not know what the amount would be.

Cross-examination by Mr. PARMELEE:

WITNESS (continuing). The paper I am referring to in my testimony is a schedule which I made up for the trustee in bankruptcy in October, 1922. I stated that it was my understanding that the $100,000 or so advanced for the pay-roll account was charged against the million dollars which was paid subsequent to the March 26th contract; I did make a personal examination to determine that fact. The result of my examination, I recall, is in this form, that at the

time the million dollars was advanced, I was special repre-
344 sentative of the Fleet Corporation at the yard of the Groton Iron Works and there was considerable controversy between George Strong, who was treasurer of the Groton Iron Works, and the Fleet Corporation officials as to whether the district comptroller's office in New York should be allowed to charge that item of $100,000 against the million dollars advanced, and I saw quite a number of letters which passed between George Strong, as treasurer of the Groton Iron Works, and McKeom, who was deputy comptroller, McNary, and two or three other officials, in which Strong strongly opposes the attitude which the Fleet Corporation took and which I was instructed to take as special representative in showing the balance available under that fund of only about $900,000, Groton's contention being that the million-dollar fund should be available from the date that it was voted by the board of trustees of the Shipping Board and it was not subpect to any overpayments claimed to have been made by the Fleet Corporation. Yes; Strong made that contention for Groton. I did make a report on the subject to E. E. McNary. I have not a copy of that report, because that is a Fleet Corporation paper.

Mr. LEE. I think that concludes our testimony with the exception of offering in evidence that excerpt from the Congressional Record, Mr. Dean's testimony at the hearing.

The SPECIAL MASTER. You asked, didn't you, this morning, that some contract of the Atlantic Corporation be produced?

Mr. LEE. May I get that and incorporate it and have it marked subject to your objection? May I have this marked?

345 Mr. PARMELEE. No; I can not object to the offering of the Atlantic contract without opposing its admission.

Mr. LEE. I offer in evidence the excerpt from the stenographer's minutes of the hearing before the selected committee of the United States Shipping Board operations, House of Representatives, covering the portion of Mr. Dean's testimony on April 24th, as much as is contained in the copies that I introduced.

Objected to.

The SPECIAL MASTER. I will say this to you gentlemen: That so far as the evidence being admitted or inadmissible, predicated upon the death of Mr. Dean—that is, if he was here the question would arise whether he could testify (now he is not here; he is dead)—I would say that the fact that you have got a statement made by him under oath before a tribunal wherein it was the subject of investigation that testimony would be admitted. The thing that bothers me is whether or not it is material as sustaining your claim, even though it is admissible testimony.

Mr. LEE. It is an admission along the direct lines that we claim now that that contract was cancelled.

The SPECIAL MASTER. Upon reflection I will admit the excerpt and allow you an exception Mr. Parmelee.

(Marked "Exhibit 32.")

Exception by defendant.

346 HEARING AT NEW HAVEN, CONN., SEPT. 15, 1925

Appearances: For the complainant, H. Starr Giddings, Herbert B. Lee, William H. Griffin; for the defendant, the United States Shipping Board Emergency Fleet Corp., Henry F. Parmelee; for the defendants, Isaac Siegel and John M. Thatcher, as ancillary receivers of the United States Steamship Company; Edwards, Murphy, and Minton, solicitors, by Franklin H. Mills, their counsel.

By an order of Judge Henry W. Goddard, made on the 14th day of September, 1925, Messrs. Siegel and Thatcher, as ancillary receivers of the United States Steamship Company, were made parties defendant to this case.

Mr. LEE. You are familiar with this order of Judge Goddard?

The SPECIAL MASTER. No; I am not. Mr. Parmelee said something that there was something in course, but he did not tell me anything about it because I was more concerned with another matter. Does this affect the matter to-day?

Mr. GRIFFIN. Counsel is present here.

FREDERICK P. HALL, witness for complainant.

Direct examination by Mr. GRIFFIN:

347 I am a naval architect and have followed that profession intermittently about twenty-five years. In October, 1918, I entered the employ of the Groton Iron Works for the purpose of preparing the basis of a statement with the Emergency Fleet at the request of Mr. E. A. Morse, the president. My official position there was chief coast engineer. Just previous to coming up to Groton, I had been chief coast engineer for the Fleet Corporation for over a year, in which I was chief of costs, in an attempt to determine there and prepare the estimates on which they awarded their contracts for the Government for a hundred ships the built under contract. They had a hundred ship contracts. Previous to that I was with the Chase Shipbuilding Corporation, and I also prepared estimates for them which were used in their negotiations with the Government for their war contracts. I had charge of the cost and estimating department in both plants.

Q. Now upon taking up your associations with the Groton Iron Works in October, 1918, what did you do with reference to making

up cost estimates and statements of claims against the Fleet Corporation with matters of that character?

Mr. PARMELEE. That is a matter of record. I would like to have my objection noted to this evidence, to apply to all evidence along this line, because it is irrelevant and immaterial.

The SPECIAL MASTER. The objection may be noted.

WITNESS (continuing). My primary purpose in coming to New London was to prepare a basis for a settlement of the contracts with the Fleet to take into consideration the excess charges and claims then in existence at the plant. I mean excess over and above the original contract price. They (Groton) had accumulated
348 claims at that time, and it was desired to affect a settlement with the Fleet on some basis at that time. At that time, in general terms, the character of the excess claims that had accumulated against the Fleet Corporation were these; the principal one was the one due to excess labor costs due to the first Macey scale, so called, coming into effect, which required all the labor in the shipyards to be raised to a certain fixed standard of rate which was specified by the labor adjustment board. Also there were certain changes which had taken place in the ships due to the elimination of what we called war requirements; the ships were designed with certain military requirements which at that time were in excess of the original contract—which were contemplated by the original contract. Then there were various other items, such as the military crews—emergency fire and lighting and numerous others. Bonus overtime. Saturday a fifteen-minute pay-off period had been put into effect by the Fleet. Excess dead-weight tonnage had not come up at that time, nor the increase in piece-work rates.

Q. Now you have referred to the chief item being increased labor cost by virtue of the going into effect of the Macey scale. Can you give his honor some idea, just in general figures, of the difference in rate per man-hour under the original contract and the rate per man-hour under the first Macey scale.

Objected to as immaterial and irrelevant.

Admitted. Exception by defendant.

WITNESS (continuing). Negotiations were carried on between the Emergency Fleet—— The original contract called for a specific labor cost which was based upon the prevailing rate of wages which were taken from the then prevailing rate of wages at the
349 Noank yards, which was figured at about approximately 35c. a man-hour. These figures later were essentially verified by the Fleet and accepted. I am referring in my answer to contract 57 SC on account of steel ships.

The SPECIAL MASTER. I understand under the original contract 57 SC the man-hour labor was 35c.

Mr. GRIFFIN. Yes.

The SPECIAL MASTER. There was some Macey scale adopted.

WITNESS (continuing). The increased man-hour rate under the first Macey scale was around 60 cents. I went to Groton Iron Works in 1918; remained with them approximately six months; I left shortly after the receivership, which was in April, 1919, the receivership being in March, 1919. During that period of six months with reference to making up estimates of costs to complete the ship under this contract 57 SC, and also with reference to making up claims in favor of Groton against the Fleet Corporation by virtue of any of the extras that you have heretofore mentioned. I prepared an estimate which was later taken by Mr. Morse and myself. I prepared several estimates of costs which were submitted to the officials of the Fleet Corporation. In particular one was submitted to Mr. Conlin in March, 1919. Yes; I prepared an estimate which was submitted to him at that time.

Mr. GRIFFIN. Your honor knows that Mr. Conlin was at that time an official of the Fleet Corporation, and in March, 1919, became one of the two receivers for the Groton Iron Works.

WITNESS (continuing). With reference to preparing claims
350 against the Fleet Corporation for extras of the character I have heretofore mentioned, I was placed in charge of all the costs and estimating work, and I found that there was no machinery that had been instigated amongst the accounting department for the preparation of their different claims, and so I arranged, through the different employees—different departments—to collect the data on costs, labor, and material and the procedure and methods that would enable the management to know what the costs of these various excess claims would be eventually with a view to building up the detail of all the claims of the Groton Iron Works against the Fleet Corporation. These various claims as they accumulated were presented to the Fleet. I continued in that work during the entire period that I was with Groton Iron Works. I had full charge of all that kind of work. When I left Groton Iron Works in April, 1919, I left the data and my working papers there; everything was left right there at the plant. I subsequently returned to the employment of Groton Iron Works about a year after the receivership was lifted, about April, 1920. As far as future claims went—that is, for the time that I was there—it was given me to understand that because of the new contract that all of those claims were worked out and it would be unnecessary new claims, but to continue to prepare the claims. As to past claims, when I came back I also had the records of the previous year under the receivership touching on all these dif-

ferent claims collected and put in shape and put on the records and up to date as far as I could. In that connection during that period or in that connection I prepared various data going to
351 show the costs of ship construction during the period of the receivership, including, among other things, the labor costs during that year. As a specimen of the data I prepared various graphic charts. This exhibit here is one of the exhibits of that character that I prepared, showing, among other things, the rate per man-hour for labor during the period of the receivership; and as a result of the labor that I performed at that time I have computed or arranged the labor rate per man-hour during the period of the receivership approximately. The average current wage rate for that period I found to be increased from 70c. at the beginning of the receivership, running up to around 75, nearly 78, or perhaps 80c. towards the end. Yes, as high as 80c. I have not averged every single week, but that graphic chart shows each week what the average rate was for that week—that is, as against a basic rate per man-hour of 35c. Under the original contract, 57 SC, I have also computed approximately the rate per man-hour for labor which entered into the figure of $199.16 per dead-weight ton allowed by the contract of March 26th, 1920, in settlement of the tonnage under 57 SC.

Mr. PARMELEE. I wish to make it plain on the record, if your honor please, that I would like my objection to this evidence on the ground of irrelevancy and immateriality to be understood to apply to the whole line of proof, so I won't need to interline my objections to every question.

The SPECIAL MASTER. Yes.

WITNESS (continuing). Yes; it was approximately 65c. Roughly, the difference between these two rates—the latter rate of 65c. per man-hour and the rate actually paid of 75 up to 80c. per man-
352 hour—would amount to a considerable sum on the tonnage under contract 57 SC—many thousands of dollars—that is a question of figuring out the man-hours and I have not been able to get that.

WITNESS (continuing). When I state that my charts show almost a continuous increase in labor charges during the period of the receivership, running up to about 80c. a man-hour, I made up those charts against the actual pay-roll expenditures from the pay roll on contracts that these sheets were made—from the actual approved pay roll. So that in giving my testimony I am dealing with actual facts—absolutely—that is, expenditures actually made in cash for the account of the Groton Iron Works, the actual weekly pay roll as paid by the Emergency Fleet for the Groton Iron Works.

NORMAN CHARLES FINNINGER, recalled by the defendant.

Direct examination by Mr. PARMELEE:

The United States had reference to but not possession of the costs sheets, calculations and computations, and so forth (of Groton Iron Works) made prior to and during the period of the receivership. They have been to my knowledge during the past year or more in the possession of the trustee in bankruptcy, Mr. Leroy Harwood. So far as the cost sheets and estimates are concerned, they have never been taken into the custody of the United States or its officials to my knowledge or the Emergency Fleet—not to my knowledge. I know of the fact that Judge Knox, having given them an order turning over the books which the Government had to the
353 trustee, and they have been since the date of that order out of the possession of the United States. Approximately from that date, because I think there was a month in between the date of the order and the date that they applied to us for them and we returned them physically to them. We gave them to them on their demand pursuant to Judge Knox's order, and they have had them ever since. Mr. Hall, the witness who has been on the stand this morning was well known to have been employed in the Groton situation. I have no knowledge of the fact that he was a naval architect, but we have knowledge of the fact that he was helping the cost department by preparing estimates during the time he was there to help the estimating department.

FREDERICK P. HALL, recalled.

Direct examination by Mr. GRIFFIN:

Q. As a result, Mr. Hall, of your personal familiarity with costs and estimates during your employment at Groton from October, 1918, to March, 1919, and your further employment there beginning in April, 1920, and your familiarity with the data as you have been able to gain it in your recent examinations at New London, can you give his honor the definite figure which the actual cost of construction of the six ships under contract 57 SC exceeded the per dead-weight ton price?

Objected to.

Mr. PARMELEE. The witness has already testified that he has not completed his investigation, and I wish to renew all my pre-
354 vious objections as to the irrelevancy and immateriality, and it is perfectly apparent that the witness' testimony on this point would not be based upon adequate data, and the data is not forthcoming. It is not a matter of personal knowledge that he can

testify to without reference, to the data which should be before the court.

Mr. GRIFFIN. It goes beyond that; the data that he has, your honor, as he has reported to me, is actual estimates that he made during his original employment—the knowledge that he has gained from his recent investigation as to the increased costs during the period of the receivership—and taking his knowledge of his own figure and superimposing upon those the knowledge that he has of increased costs it gives him a basis upon which he can arrive at a minimum of the actual costs per dead-weight ton. In other words, he has gotten some data together, some figures, showing what the actual costs were and what the increased costs were.

The SPECIAL MASTER. That assumes by your very statement that there may be others, if he has got some upon which such opinion could be predicated.

Mr. GRIFFIN. It should be increased. In other words, he might, after further examination, increase the figures, but I am now asking for minimum figures.

The SPECIAL MASTER. I think until we have before us the evidence in the way of records, or something substantial like that, on which to predicate such an answer I won't allow the question.

Objection sustained.

Exception by complainant.

355 DEFENDANT'S EXHIBIT A

(Complainant's Ex. 8)

Mortgage deed, dated April 4, 1918, covering the shipyard property at Groton, Connecticut, in which the parties are described as follows: "Know ye that Groton Iron Works, a Maine corporation, having its office and principal place of business in the town of Groton, county of New London, State of Connecticut, acting herein by Erwin A. Morse, its president, thereunto duly authorized (hereinafter referred to as the mortgagor) for and in consideration of the sum of one million ($1,000,000) dollars received to its full satisfaction of the United States Shipping Board Emergency Fleet Corporation, a corporation of the District of Columbia (hereinafter referred to as the mortgagee), does give, grant, bargain, sell, and confirm unto the said mortgagee, its successors and assigns."

By stipulation and order, this exhibit is printed by reference only as above, and is set out in full and submitted in the volume of physical exhibits as A at page 1.

DEFENDANT'S EXHIBIT B

(Complainant's Ex. 9)

Mortgage deed, dated September 5, 1918, for $800,000, covering same property and between the same parties as Exhibit A.

This exhibit is set out in full in volume of physical exhibits, at page. 12.

356 DEFENDANT'S EXHIBIT C

Release of certain mortgaged premises, dated January 19, 1924, in which the parties are described as follows: "This indenture, made the 19th day of January, A. D. one thousand nine hundred and twenty-four, between the United States of America, represented by the United States Shipping Board, acting by and through the United States Shipping Board Emergency Fleet Corporation, a corporation of the District of Columbia, party of the first part, and Groton Park Real Estate Company, a corporation duly organized and existing under the laws of the State of Connecticut, party of the second part." This exhibit is set out in full in volume of physical exhibits at page 25.

DEFENDANT'S EXHIBIT D

Agreement extending payment of two mortgages (Exs. A and B), dated March 25, 1920, in which the parties are described as follows: "Know all men by these presents that, whereas the Groton Iron Works, a Maine corporation having its office and principal place of business in the town of Groton county, of New London, State of Connecticut, has received from the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, and having its principal place of business in said district (hereinafter called the 'Fleet Corporation'),

357 certain loans and advances amounting in the aggregate to the sum of one million eight hundred thousand ($1,800,000.00) dollars, pursuant to certain agreements between said parties, and

Whereas said loans and advances have been secured or intended to be secured by two certain mortgages, one made by said Groton Iron Works to said Fleet Corporation dated April 4, 1918, and recorded volume 61, page 42, and following of the land records of said Groton, and the other dated September 5, 1918, and recorded in said land records, said mortgages being incorporated herein by reference thereto, and

Whereas said loans and advances have been reduced, so far as the principal thereof is concerned, by application and credit upon said principal of a certain portion of the contract price for the construc-

tion of the steamship "Tollard" by said Groton Iron Works for said Fleet Corporation, so that the total amount of principal of said loans and advances is now one million seven hundred sixteen thousand six hundred sixty-six and 67/100 dollars ($1,716,666.67), and

Whereas the land at said Groton described in said mortgages and other property of said Groton Iron Works has been and is now in the hands of receivers appointed by the Superior Court for the county of New London, State of Connecticut, and it is desired by said Groton Iron Works and by certain creditors and other parties interested that said receivership should be terminated and the possession and occupation of the property described in said mortgages resumed by said Groton Iron Works, and that said Groton Iron Works should pursue its business thereon, and

Whereas it is represented by said Groton Iron Works to said Fleet Corporation to be an essential feature of said proceedings,
358 without which said resumption of possession and of business by said Groton Iron Works can not be had, that the said loans and advances be extended, and said Fleet Corporation is willing to cooperate, as set out herein, to that end, provided said Groton Iron Works shall faithfully keep and observe its obligations arising out of said mortgages and out of such decrees of said Superior Court as may be entered providing for the aforesaid resumption of possession, and out of the provisions of this instrument.

"Now, therefore, for the above purposes, and in consideration of the sum of one dollar to it in hand paid by the said Groton Iron Works, receipt of which is hereby acknowledged, said Fleet Corporation does hereby extend and postpone the maturity of said principal sum now due and payable of one million seven hundred sixteen thousand six hundred sixty-six and 67/100 dollars ($1,716,666.67) until the 1st day of July, 1921, and does hereby stipulate and agree with said Groton Iron Works upon the conditions herein contained that proceedings to collect said amount due, or to foreclose said mortgages or either of them, will not be brought by said Fleet Corporation against said Groton Iron Works until after said last named date."

This exhibit is set out in full in volume of physical exhibits at page 29.

Defendant's Exhibit E

Contract dated June 15, 1917, is the same as complainant's Exhibit 1, attached to bill of complaint and so printed.

359

Defendant's Exhibit F

Contract dated September 30, 1918, is the same as complainant's Exhibit 2, attached to bill of complaint and so printed.

DEFENDANT'S EXHIBIT G

Contract dated August 11, 1917, is the same as complainant's Exhibit 3, attached to bill of complaint and so printed.

DEFENDANT'S EXHIBIT H

Contract dated April 20, 1918, is the same as complainant's Exhibit 4, attached to bill of complaint and so printed.

DEFENDANT'S EXHIBIT I

Contract dated March 26, 1920, is the same as complainant's Exhibit 5, attached to bill of complaint and so printed.

DEFENDANT'S EXHIBIT J

Extracts from proceedings of United States Shipping Board, March 6 and April 12, 1923. This exhibit is submitted in full in volume of physical exhibits at page 35.

DEFENDANT'S EXHIBIT K

Extract from proceedings of Fleet Corporation, April 9th and 17th, 1923. This exhibit is submitted in full in volume of physical exhibits at page 39.

360 DEFENDANT'S EXHIBIT L

Extract from minutes of meeting of stockholders of Fleet Corporation April 17th, 1923. This exhibit is submitted in full in volume of physical exhibits at page 44.

DEFENDANT'S EXHIBIT M

Assigment—Fleet Corporation to United States of America

This indenture, made the 16th day of April, 1923, between the United States Shipping Board Emergency Fleet Corporation, a corporation organized and existing under the laws of the District of Columbia, party of the first part, and the United States of America, party of the second part, witnesseth:

Whereas, by virtue of the emergency shipping fund provisions of the appropriation act of Congress, approved June 15, 1917, the President of the United States was authorized and empowered to engage in the construction and operation of ships and shipping, as more

fully set forth in said act, and the President was further authorized by said act of Congress and other subsequent acts of Congress to utilize the appropriations made by the said Congress from that time down to the present time for the purpose of carrying out the emergency shipping fund provisions of the said appropriation act of June 15, 1917, and its supplements and amendments, and

Whereas, pursuant to the said act of June 15, 1917, and its supplements and amendments, the powers of the President were duly
361 delegated to the United States Shipping Board and/or United States Shipping Board Emergency Fleet Corporation and the said last two mentioned bodies, pursuant to the powers in them vested by the said act of Congress and in pursuance of the said duty of carrying on the construction and operation of ships and shipping used the moneys of the United States so appropriated in the purchase of goods, chattels, bonds secured by mortgage, bonds, notes, shares of stock, securities, contracts, personal property, claims and choses in action, including accounts against divers persons for the payment of money, and all personal property of every kind and description whatsoever, and

Whereas the legal title to the said property above mentioned was taken and now stands in the name of the United States Shipping Board Emergency Fleet Corporation, party of the first part, but the said party of the first part has no beneficial ownership therein, but, on the contrary, the beneficial ownership in the same is, and always has been, in the United States of America since the same was so acquired by the party of the first part, and

Whereas the United States Shipping Board, pursuant to the powers and duties under the said acts hereinbefore referred to, has ordered and directed that the legal title to all of the said property should be conveyed and become vested in the United States of America, party of the second part, to whom the same really belongs, and the United States Shipping Board Emergency Fleet Corporation, acting in its own capacity and also by express direction of said United States Shipping Board, desires by this deed to carry out the directions of the said act of Congress and the said direction of the United States Shipping Board.

Now, therefore, the party of the first part, in consideration of the premises and of the sum of one dollar ($1.00) lawful money of
362 the United States, paid by the party of the second part to the party of the first part, receipt of which is hereby acknowledged, has granted, bargained, sold, transferred, assigned, and conveyed and by these presents does grant, bargain, sell, transfer, assign, and convey unto the party of the second part, its successors and assigns forever, all the goods, chattels, bonds secured by mortgage, bonds,

notes, shares of stock, contracts, securities, claims, personal property, and choses in action, including accounts against divers persons for the payment of money and all personal property of every kind and description whatsoever wherever the same may be situated, heretofore acquired by the party of the first part, and not heretofore disposed of by it, and now remaining under the disposition or control of the party of the first part.

To have and to hold the property hereinabove conveyed to the party of the second part, its successors and assigns forever. And the said party of the first part, its successors and assigns, do covenant and agree to and with the party of the second part, and its assigns, that it will, whenever requested to do so, make and execute any and all such further deeds of conveyances and other documents as may be required by the party of the second part and its assigns for the further assurance to the party of the second part and its assigns of the title to any and all of the said property hereinabove referred to.

In witness whereof the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officers the day and year first above written.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,

[SEAL.] By (Sgd) J. B. SMULL, *President.*

Attest:

(Sgd) CLIFFORD W. SMITH.

363 DISTRICT OF COLUMBIA, *ss:*

On this 18th day of April, 1923, before me came J. B. Smull, to me known, who, being by me duly sworn, did depose and say that he resides in District of Columbia; that he is the president of the United States Shipping Board Emergency Fleet Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of trustees of said corporation; and that he signed his name thereto by like order.

(Sgd.) CARL P. KREMER,
Notary Public, District of Columbia,
United States of America.

DEFENDANT'S EXHIBIT N

(Complainant's Ex. 10)

Assignment of mortgage deed (Ex. A) by Fleet Corporation to United States of America, dated April 18, 1923, in which the parties are described as follows:

"Know all men by these presents, that the United States Shipping Board Emergency Fleet Corporation, a corporation duly authorized and existing under the laws of the District of Columbia, for and in consideration of the sum of ten ($10.00) dollars, lawful money of the United States of America, to it in hand paid by the United States of America at or before the unsealing and de-
364 livery of these presents, the receipts whereof is hereby acknowleged, has granted, bargained, sold, assigned, transferred, and set over and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said United States of America, its successors and assigns, a certain indenture of mortgage bearing date the 4th day of April, in the year one thousand nine hundred and eighteen, made by Groton Iron Works, a corporation organized and existing under the laws of the State of Maine, mortgagor, to the United States Shipping Board Emergency Fleet Corporation, mortgagee, and recorded in the land records of the town of Groton, county of New London, and State of Connecticut on May 27th, 1918, in book No. 61, page 42, to secure the payment of the sum of one million ($1,000,000.00) dollars."

This exhibit is submitted in full in volume of physical exhibits at page 50.

DEFENDANT'S EXHIBIT O

(Complainant's Ex. 11)

Assignment of mortgage deed (Ex. B) for $800,000, dated April 18, 1923, between the same parties and in the same form as Ex. N.

This exhibit is submitted in full in volume of physical exhibits, at page 53.

365 DEFENDANT'S EXHIBIT P

Minutes of meetings of directors of Groton Iron Works

Minutes of the meeting of the board of directors of the Groton Iron Works, held at No. 50 Broad Street, New York City, the 24th day of April, 1917, at 2 p. m., pursuant to regular call and due notice.

The meeting was called to order and presided over by Mr. E. A. Morse, president.

The following directors were present: Samuel Adams, William Guggenheim, Brodie G. Higley, George W. Loft, Benjamin W. Morse, Erwin A. Morse.

Mr. B. W. Morse, secretary of the company, acted as secretary.

The minutes of the meeting of the directors of this company held April 17, 1917, were read and approved.

Director Higley reported on the progress being made in connection with the transfer of the property of the Robert Palmer & Son Shipbuilding & Marine Railway Company to the Groton Iron Works.

A report was also made regarding the matter of constructing wooden and steel ships for the United States Government, but as the contracts had not been decided on the report was only made for the purpose of showing progress.

There being no further business, the meeting adjourned.

Secretary.

366 Minutes of an adjourned meeting of the board of directors of the Groton Iron Works, held on June 12th, 1917, at #50 Broad Street, New York City.

Upon motion, Samuel Adams acted as president pro tem.

Secretary B. W. Morse acted as secretary.

The following directors were present: Samuel Adams, Brodie G. Higley, George W. Loft, Benjamin W. Morse, Erwin A. Morse. C. W. Morse was also present.

Mr. C. W. Morse gave a report in detail regarding the contract which he had been working on with the Government for the construction of twenty wooden ships by the Groton Iron Works; also concerning the bids which had been put in for the construction of twenty-four steel ships and the matter of negotiating with the Cuban Government for building submarine chasers for them and also submarine chasers for Navy Department.

After a full discussion of the matters reported by Mr. C. W. Morse, the following resolution was offered by Mr. Loft, seconded by Mr. Higley, and, upon vote, unanimously adopted:

"Resolved that the secretary of this company, B. W. Morse, be authorized and empowered to enter into and execute a contract with the United States Shipping Board Emergency Fleet Corporation for the construction of twenty wooden ships at a contract price of $300,000 each."

The following resolution was offered by Mr. Loft, seconded by Mr. Higley, and, upon vote, unanimously adopted:

"Resolved that the secretary of this company, B. W. Morse,
367 be authorized and empowered to enter into and execute a contract or contracts with the Navy Department of the Government of the United States of America for the construction of submarine chasers in any number from one to one hundred at a contract price of $52,000 each."

There being no other business the meeting adjourned.

Secretary.

Minutes of a special meeting of the board of directors of the Groton Iron Works, pursuant to call of the president and secretary, held at No. 50 Broad Street, New York City, on June 20th, 1917.

The following directors were present: Samuel Adams, Brodie G. Higley, George W. Loft, Benjamin W. Morse, Erwin A. Morse; Thomas A. Sherman acted as secretary pro tem.

Mr. Samuel Adams in the chair.

The secretary then reported that pursuant to the by-laws two day's notice of the meeting had been mailed to each director of the company, a copy of which notice with proof of mailing was as follows:

NEW YORK, *June 16, 1917.*

Mr B. W. MORSE,
Secretary Groton Iron Works,
50 Broad Street, New York City, N. Y.

DEAR SIR: In accordance with the authority vested in me by
868 the by-laws of this company, I hereby call a special meeting of the board of directors to be held in room No. 2001, 50 Broad Street, New York City, N. Y., on Wednesday, June 20th, 1917, at 2 o'clock p. m. for the following purposes:

First. To consider and take action on a proposition of approving, ratifying, and confirming a contract with the United States Shipping Board Emergency Fleet Corporation for the construction of twelve wooden hulls and authorizing the execution and delivery of a duplicate of said contract to the said United States Shipping Board Emergency Fleet Corporation, and authorizing and directing the performance and carrying out of said contract.

Second. For the transaction of any other business in connection with the foregoing as may be necessary and proper.

Third. For the transaction of any other business that may properly come before said meeting.

Very truly yours,

(Sd.) E. A. MORSE, *President.*

Mr. G. W. Loft offered the following preamble and resolution and moved its adoption:

"Whereas, the Congress of the United States has declared that a state of war exists between our country and the Imperial Government of Germany, and

"Whereas our country has joined in the great war now being waged to secure the enjoyment of the blessings of civilization, justice, and liberty throughout all the world, and

869 "Whereas the Government of the United States is about to build or cause to be built a large number of wooden vessels to supply its needs for war purposes and is desirous that the production of all kinds of ocean tonnage be immediately increased to the limit of the country's facilities, and

"Whereas this company has a shipbuilding plant located at Noank, Connecticut, particularly well adapted and equipped for the build-

ing of wooden vessels and also a suitable site for the construction of either wooden or steel vessels located at Groton, Conn., and

"Whereas it is the desire and purpose of the directors of this company, both as officials thereof and as individuals, to lend every aid and render every assistance and service within their power to their country in its time of need that the war which has been thrust upon it may be prosecuted to a successful termination.

"Now, therefore, be it resolved that the president and officers of this company be, and they hereby are, authorized and instructed to place at the disposal of the Government of the United States the entire shipbuilding plant, equipment, and other resources of the company, and,

"Furthermore, to arrange for and to execute with the Government of the United States any contract or contracts for the building of vessels or other work that the Government may require upon such terms as it may prescribe."

The motion was duly seconded by Mr. Higley and, upon vote, was unanimously adopted.

Upon motion made and seconded it was, upon vote, unanimously

"Resolved that the proper officers of this company be in-
370 structed to advise the proper officials of the Government of the United States of the contents of the preceding resolution and of the company's willingness to carry out both its letter and spirit."

There being no further business, the meeting adjourned.

(Signed) T. A. SHERMAN,
Secretary.

DEFENDANT'S EXHIBIT Q

Gen. Goethal's circular letter to prospective shipbuilders

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION
Washington, June 15, 1917.

DEAR SIRS: The urgent deficiency bill providing appropriations for the military and navy establishments, which has passed Congress and is now awaiting signature of the President, provides, in addition, an emergency shipping fund and conveys certain broad powers to the President relative to the emergency production of shipping—both by construction and purchase. A copy of this bill in its final shape will be forwarded to you as soon as it is available.

The meeting held in Washington this morning, which was called jointly by Mr. William Denman, as chairman of the United States Shipping Board, and by myself, as general manager of the United States Shipping Board Emergency Fleet Corporation, was for the

purpose of acquainting you generally with the expected fu-
371 ture program and so that we could inform ourselves likewise of your views and take the same consideration in presenting any recommendations to the President relative to his exercise of the wide powers conveyed by the above mentioned legislation.

At the meeting, as an effective method of action, the information desired of you was stated generally and this letter is being forwarded to you as written confirmation of same in order that you can make specific reply to the various points raised. It is expected that the replies received to these joint letters which are being sent out will enable a definite program being laid down by this corporation and early action being taken that will assist appreciably in relieving the deficiency in available shipping tonnage that is confronting our country. The problems which were discussed this morning, and which are of immediate moment, relate entirely to a construction program (including purchase). Matters connected with the operation of these vessels fall entirely under the jurisdiction of the United States Shipping Board and not of the Emergency Fleet Corporation and will be taken up subsequently as a separate matter by the Shipping Board.

The data sheets enclosed are aimed to outline generally the information which is desired. It is desired that you feel at liberty to supplement it in any way that you think necessary in order to make a complete presentation of the matter, using these data sheets as a basis. If you will kindly forward the information requested therein, as soon as practicable, it will be much appreciated. As a matter of information to those shipbuilding companies having Navy contracts, it may be stated that the Emergency Fleet Corporation expects
372 to go over the naval program with the Navy Department within a few days in order to determine exactly how far the facilities at these plants will be available for cargo vessels of the Emergency Fleet Corporation.

If any additional information is desired, kindly advise at once.

Yours very truly,

(Signed) GEORGE W. GOETHALS,
General Manager.

Enclosures—data sheets.

Data sheet (attached)

1. Please give complete information covering all vessels you have under contract, other than Government vessels, on which work has been performed, and which, in your opinion, it is advisable to proceed with their completion. The useful data under this query would

include particulars as regards the size and character of the vessel, percentage of completion, amount of materials in all departments received at yard or when delivery of materials is expected, if vessels have been started in building berths, and to what extent advanced, launching date, estimated date of delivery, ownership, contract price, and any special terms connected with the contract or the work that would be of interest in this connection; to what extent, if any, work can be expedited, and what it would mean in earlier time of delivery and increased cost, if any. For those companies who have contracts with the Navy Department or other branches of the Government, if their replies are based on certain assumptions as regards the
373 percentage of their facilities that must be kept on naval vessels, same should be stated; and any assistant assumptions as regards increased production of merchant marine vessels with a lower percentage of facilities on Navy work should be similarly stated, so that this information can be used in consultation with the Navy Department. Please report separately for each vessel.

2. It is expected that replies to querry No. 1 will cover all matters connected with work now under contract and already started. Query No. 2 relates to outstanding contracts on which work has not started. It is desired that a full description be given to all of these contracts so that the Emergency Fleet Corporation will be in full possession of all pertinent facts relating thereto. A recommendation or suggestion is desired in each case as to whether you think it would be better to proceed with these vessels now under contract, in addition to those that would fall under the preceding query, giving reasons for your views. Before passing favorably on cases like this it would be necessary to examine the plans to see whether the vessel would be entirely satisfactory for our purposes. It is desired, both under this query and under the preceding query, to receive and consider your suggestions for making any changes in the plans of these vessels in case the contracts are taken over by the Emergency Fleet Corporation. Your reasons for the recommendation on contracts falling under this head should include a statement as to any saving in time in getting the tonnage completed that would result therefrom; and this corporation will also consider any possible economy on the basis of cost per aon dead-weight carrying capacity.

3. Under this heading will fall all information relating to
374 your ability to take contracts from the Emergency Fleet Corporation for the entire completion of steel steamships within not more than 18 months from July 1, 1917. This corporation will permit you, if desired, to build your own types of vessels, to which

you are accustomed, provided the plans and specifications are approved by our naval architect. It desires to receive formal proposals based on price per ton dead-weight carrying capacity, with dates of delivery. So far as possible the corporation will give preference to the lowest prices received, other things being equal, but due consideration will be given promised times of delivery, the type of vessel offered, and other characteristics of the proposal from the standpoint of desirability as viewed by the corporation. Your proposals should be accompanied by a schedule of complete information, giving the assumptions on which your proposal is based, as described hereinafter. If your proposal is accepted, these schedules will be the basis of the contract and you will be protected as regards described hereinafter. If your proposal is accepted, these schedules should be properly certified as being the correct basis of your estimate and should include, first, a schedule, in as much detail as practicable, showing your present wage schedule; second, there should be a schedule of your base material prices. In the case of steel no firm price has yet been agreed upon with the steel companies. You may use in your estimate, the following base prices: Plates, 4¼c., shapes 4c., bars 3¾c., f. o. b. Pittsburg. If the actual price is higher than this, the corporation will pay the difference. If it is lower than this, a deduction will be made in your contract price. Before making any commitments, the written approval of this cor-
375. portion should be obtained. Your schedule unit prices of all materials should be as complete as possible. There should also be submitted a schedule giving your arrangements and prices for the purchase of boilers, engines, shafting, winches, windlasses, deck and life boat equipment, navigating instruments, and all important auxiliaries that go with the completed ship.

If the corporation is able to purchase these accessories in large quantities by combining the order for all of its steel steamships, it will expect to absorb these savings. It you can not cover at the prices named in your schedule, due to an advance in prices, after you have made your estimate, the corporation will protect you on your estimated price. If you have any special suggestions or requests to make requiring additional protection as regards the item of labor than is given hereinabove, you may state same in your proposition.

DEFENDANT'S EXHIBIT R

Requisition for disbursing funds, U. S. Shipping Board

This exhibit submitted in full in volume of physical exhibits at page 56.

376 DEFENDANT'S EXHIBIT S

Extract from proceedings United States Shipping Board Emergency Fleet Corporation executive committee, April 29, 1920

Whereas the Fleet Corporation has a contract with the Groton Iron Works of March 26, 1920, to provide working ship construction funds to the extent of $16,155,648, and in addition thereto agrees to give a credit of one-half million dollars under terms to said corporation, together with ship property and materials in the value of $325,000; and

Whereas the Groton Iron Works requires $1,000,000 additional ship construction funds to complete its program, which is exceeding 90% complete, and the Fleet Corporation maintain that $16,225,167.38 has been advanced; and

Whereas one of two courses lies open to the Fleet Corporation in order to get the building program complete. One is to place the corporation in the hands of a receiver which would require us to furnish the receiver with the necessary $1,000,000 and leave us with protection for that $1,000,000 against our own ship property which eventually would give us no protection. The other way is for us to advance the $1,000,000 through our disbursing officers and apply against that $1,000,000; (a) the $500,000 cancellation credit due to it; (b) withhold title to the $325,000 of ship property and material deliverable to it under contract; and (c) take a written guarantee from the Virginia Shipbuilding Corporation of the performance of the entire Groton contract. The Virginia Shipbuilding Corporation has net liquid assets exceeding $4,000,000.

377 Be it resolved that the district manager of the North Atlantic district of the Fleet Cor*o*ration be, and he is hereby, authorized to disburse through an imprest fund such funds as are necessary to pay the actual cost of completing the three vessels remaining under construction under contract 225–SC up to the amount of $1,000,000, and

Further resolved that this advance shall be made only upon the condition that the same shall not prejudice the rights of the Fleet Corporation under the contract of March 26, 1920, and upon the further condition that the Virginia Shipbuilding Corporation, a subsidiary of the United States Steamship Company, which said United States Steamship Company owns a controlling interest in the Groton Iron Works, guarantees to reimburse the Fleet Corporation for any excess payments made to the Groton Iron Works over and above the amounts provided for in the said contract of March 26, 1920, which

guaranty agreement shall be satisfactory in form and substance to the general counsel of the United States Shipping Board, and

Further resolved that a copy of this resolution be sent to the general comptroller in order that he may issue instructions to the district comptroller of the North Atlantic district for the disbursement of the foregoing funds.

378 DEFENDANT'S EXHIBIT T

Extract from proceedings United States Shipping Board Emergency Fleet Corporation exectutive committee, September 8, 1920

Whereas the executive committee of the board of trustees of the United States Shipping Board Emergency Fleet Corporation at a meeting on April 29, 1920, authorized the district Manager of the North Atlantic district of the Fleet Corporation to disburse through an impressed fund such funds as were required to pay the actual cost of completing the three vessels remaining under construction at the Groton yard of the Groton Iron Works under contract 225–SC and the supplements thereto up to an amount of $1,000,000, and

Whereas all of said fund has been expended with the exception of approximately $32,000, and

Whereas additional funds are necessary to complete the two vessels now under construction under the said contract 225–SC and the supplements thereto,

Be it resolved that upon the expenditure of the balance remaining in the said $1,000,000 fund, the district manager of the North Atlantic district of the Fleet Corporation be, and he is hereby, authorized in his discretion to disburse through an impressed fund such funds as may be necessary to pay current pay rolls and current construction costs for the purpose of completing the said two vessels remaining under construction under the said contract 225–SC and the supplements thereto, provided, however, that the said district manager shall not authorize the advance of funds in excess of $200,000; and

379 Further resolved that this advance shall be made only upon the condition that the same shall not prejudice the rights of the Fleet Corporation under the contract of March 26, 1920, between the Groton Iron Works and the United States of America, represented by United States Shipping Board Emergency Fleet Corporation, and

Further resolved that a certified copy of this resolution shall be sent to the general comptroller in order that he may issue instructions to the district comptroller of the North Atlantic district for the disbursement of the foregoing funds.

DEFENDANT'S EXHIBIT U

Specimen voucher and checks, U. S. Shipping Board and Fleet Corporation

This exhibit submitted in full in volume of physical exhibits a page 58

DEFENDANT'S EXHIBIT V

Form of settlement warrant and letter, Fleet Corporation

This exhibit submitted in full in volume of physical exhibits a page 65

380 DEFENDANT'S EXHIBIT W

Minutes of Virginia Shipbuilding Company's director's meeting

Minutes of the meeting of the board of directors of the Virgini Shipbuilding Corporation adjourned from April 27th, 1920, and hel April 30th, 1920, at the offices of Mr. Colin H. Livingstone, No. 133 F Street NW., Washington, D. C., at 2.00 p. m.

Present, C. W. Morse, C. H. Livingstone, H. F. Morse, E. A Morse; absent, Wilton J. Lambert, William Guggenheim, R. Lan caster Williams.

Mr. C. W. Morse, chairman of the board of directors, presided R. M. Much, secretary of the corporation, acted as recording sec retary.

The chairman of the board presented the following memorand from the United States Shipping Board Emergency Fleet Corpora tion in the matter of the Virginia Shipbuilding Corporation an the Groton Iron Works, dated April 26th, 1920. These were rea and ordered spread upon the minutes as follows:

Memorandum to the trustees, Emergency Fleet Corporation re Vir ginia Shipbuilding Corporation

On September 24th, 1919, the Virginia Shipbuilding Compan was operating under a contract for the construction of certain num ber of ships for the Emergency Fleet Corporation. It was deeme wise to have the Virginia Shipbuilding Company take over the property and contract in order that the Emergency Fleet Corpora tion would not have to invest any further moneys in the contra

and thus liquidate that particular contract. There were twelve
381 boats under the original program; two were cancelled and the material was in the yard for the completion and delivery of ten boats. The Fleet Corporation had invested in the property approximately $13,500,000 and made a contract with the Virginia Shipbuilding Company whereby the Virginia Shipbuilding Company was to assume that amount and to deliver to the Fleet Corporation sufficient boats to liquidate the indebtedness. Since then the Virginia Shipbuilding Company has raised outside capital for the benefit of that contract and put into that contract approximately $2,800,000, of which $2,200,000 has been put into ship construction and the balance to pay up plant construction obligation. They have delivered to us to date seven ships at $225.00 a dead-weight ton of 9,400 dwt. each. Two of them we have delivered back to them and have retained mortgages on them of $1,511,250 each or mortgages title of $3,020,500. We held absolute title to the other five ships of the value of $10,575,000, or a total value held in our hands of approximately $13,500,000, with some interest due thereon. In this $13,500,000 is included a mortgage on the plant of $1,200,000.

In addition to this they have in the Virginia Shipbuilding Company property (a) one ship ready to be delivered in between two and three weeks, its to-day value approximately $2,000,000; (b) another ship that is a little over three-quarters complete to be launched in three weeks, valued at approximately $1,500,000; (c) another ship that is a little more than one-half complete valued at $1,000,000, with approximately (d) $300,000 of inventory and (e) an actual investment in plant and yard equipment of approximately $3,000,000, or property in addition to the equities which we hold of the value of $7,800,000.

It will be noted from the above, first, that we hold in our possession to-day sufficient equities at the prices named by us per
382 ton to take care of our full debt except the interest, and, second, that they have in addition to their corporation to-day equities valued at $7,800,000.

Through the terms of the contract written we are destroying any opportunity that they may have to so handle that equity of $7,800,000 which belongs to them so that they might in a businesslike way complete the balance of the operations which that corporation is carrying on for our benefit.

Since we are fully protected, they ask that we cancel our mortgage of $1,200,000 and permit them to dispose of new mortgage issue or use it that they might receive further funds to put into completion the balance of their contract.

It will be noted that we hold title to-day to the material of the three ships which are being completed, which have an aggregate value of $4,500,000, which thus gives us a security of approximately $4,500,000, less interest, beyond our original investment in that property.

They also request that we extend the terms of our mortgage on the ships delivered and to be delivered over a period of twelve years from the date of delivery as granted in other cases. If this is done, they state that they can save their $7,800,000 equity in the contract, and if it is not done, we will destroy in a large way not only their equity but their ability to complete the contract with us, because they are not granted the same terms that other companies have been granted from the Emergency Fleet Corporation.

2 ships delivered	$3,022,500
5 " " we hold full title	10,575,000
We hold	13,597,500
They owe us	13,500,000 with interest.

383 In addition we hold title to—

1 ship almost complete, value	$2,000,000
1 ship ¾ complete, value	1,500,000
1 ship more than ½ complete, value	1,000,000
Inventory in yard	300,000
Actual investment plant and equipment	3,092,000
Additional equity	7,800,000

(S.) MARTIN J. GILLEN,
Assistant to the Chairman.

(S.) R. O. DEAN,
General Counsel.

(S.) W. W. NOTTINGHAM,
Assistant Counsel.

Memorandum to the trustees, Emergency Fleet Corporation (printed in full at page 228 of record in Nottingham's testimony)

The following resolution was introduced by Mr. E. A. Morse, seconded by Mr. C. H. Livingstone, and unanimously adopted.

Resolved, that if the United States Shipping Board Emergency Fleet Corporation releases and cancels the mortgages now held by the United States Shipping Board Emergency Fleet Corporation on the property of the Virginia Shipbuilding Corporation, the Virginia Shipbuilding Corporation will guarantee the fulfillment on the part of the Groton Iron Works of the contract between the Groton Iron Works and the United States Shipping Board Emergency Fleet Corporation, and the president or vice president, the treasurer or

assistant treasurer, or the secretary of said Virginia Shipbuild-
384 ing Corporation are hereby authorized and directed to execute the necessary papers to carry out the provision of this resolution in such form as the United States Shipping Board Emergency Fleet Corporation may require.

There being no further business, the meeting was adjourned to meet in New York May 7, 1920, at 12 o'clock noon.

(Sgd.) R. M. MUCH,
Recording Secretary.

DEFENDANT'S EXHIBIT X

Notes of conference, March 30, 1920

DISTRICT OF COLUMBIA *ss:*

ADOLF AMENDE, being duly sworn, deposes and says that he is an official reporter for the United States Shipping Board and that he has held such position for upwards of six years; that on March 30, 1920, in pursuance of his official duties, he reported a hearing before the United States Shipping Board at Washington, D. C., relative to the Groton Iron Works. Deponent further says that the document to which this affidavit is attached and made a part is a true transcript of his notes taken at said hearing.

ADOLPH AMENDE.

Subscribed and sworn to before me this 22nd day of October, 1924.

MAURICE J. PIERCE,
Notary Public.

MARCH 30, 1920.

Hearing before the United States Shipping Board, Washington, D. C., March 30, 1920, regarding the Groton Iron Works.

385 The hearing convened at 2.35 p. m. and adjourned at 3.10 p. m.

Present, representing the United States Shipping Board, Chairman Benson, Commissioner Stevens, Commissioner Donald, Commissioner Scott, Hon. John Barton Payne, General Counsel Dean, Assistant Counsel Nottingham, General Comptroller Abadie; present, representing the Groton Iron Works, Mr. Morse, Mr. Burdit', Mr. Gordon, Mr. Blodgett.

Mr. DEAN. This is a matter with the Groton Company. As I understand it, when this contract came to Colonel Abadie's attention he suggested that they be given an opportunity to go over the financial condition in some detail, and so Adamson and Eason, who is the man up there who knows the accounting end of it, went over

the matter very fully. Then, as a result of his report to you, the matter was referred to General Weaver and myself. This morning we had a conference with Messrs. Frick, Sullivan, Weaver, Abadie, Adamson, Eason, Nottingham, and Dean in my office.

In short, the proposal now at the Groton plant is that we shall advance or pay this sum of $250,000, which shall be applied to the claims of other creditors. That is equivalent to twenty per cent of the claims of these other creditors; and where Adamson and Abadie seem to have difficulty was regarding whether or not we were justified in advancing this $250,000—did we get anything for this
386 money?—was it any advantage to the Fleet? Mr. Frick, who came into the conference, stated that he felt the receivers were carrying some pretty large overhead expenses and that those should be reduced. He wanted to see what he could do in the line of reducing those expenses. He pointed out that we should have to complete these three ships, one launched and two on the ways which were well along—we have got to finance that—and the feeling this morning was that if we paid this $250,000 additional we got little or nothing, and that the lifting of the receivership did not justify the payment of this $250,000. Mr. Frick wished to go to the plants and see that the receiver reduces the overhead to some extent. Captain Nottingham has made the suggestion—very properly to my mind—that we should have some sort of a weekly report as to just how these overhead expenses are running. They are pretty large. Perhaps, Captain, you can tell them.

Mr. NOTTINGHAM. In November, when we spent three weeks in the Philadelphia office, it was estimated that at that time the difference between the cancellation and the profit—between actual cost and tonnage prices—was about $800,000, and at that time the overhead of the plant was running fifty to fifty-two per cent. In the last figures they have wiped out that $800,000, and it is still estimated what it will cost to complete, and the steel contract will just approximately split even if you pay this $250,000. They still claim that there is an overpayment on the wooden contract; they still claim there is an overpayment there, and that question of cancellation comes up. But the disbursements last month were approximately $600,000, and the pay roll is only running about $35,000 a week. That in-
387 cludes not only only direct labor but the other labor chargeable against overhead. So there had been some large disbursements for supplies. At the time Mr. Eason was there he supposed there was one hundred per cent on the job, but evidently that is not correct. If we paid in the $250,000, it cuts it down, so that leaves the mortgage at its full value at present; and if there is any over-

ayment on the wooden fleet that would be in addition a deficit only, total outlay on the three contracts.

Mr. DONALD. What is the amount, $250,000?

Mr. NOTTINGHAM. It was estimated from the first of March to the mpletion it would cost $1,400,000 to complete the ships. They have ut in $600,000 this month. That leaves about $800,000 to carry on e contract to completion; and if that figure is correct, taking this 50,000, that would leave you $550,000 to finish the work on three ips to bring it out on an even basis on the steel contracts.

Mr. PAYNE. Who made that estimate of $250,000?

Mr. NOTTINGHAM. That is the receivers' estimate; and the New ork district officers, as far as they can ascertain, seem to think it is l right; they have no fault to find.

Mr. DEAN. Mr. Frick proposed to go to Groton at once to take up ith the receivers the reduction of the overhead expenses and obtain statement covering estimates to complete the work on the three ips. That came up for discussion this morning.

Mr. NOTTINGHAM. One item is the receivers have been maintaining force for investigating the creditor's affairs, and the salary of that force has been charged to ship construction. The only money 8 the receiver has been getting has been received from us, but it has been charged against ship construction—the entire admin- rative expenses.

Mr. SCOTT. I have understood that the receivers claim that in the oank yard they have a claim against us of $1,600,000.

Mr. NOTTINGHAM. $1,000,000 on Noank.

Mr. PAYNE. For what was that?

Mr. NOTTINGHAM. Cancellation and various other claims arising t of that, and then they claim $1,250,000 on the steel contracts. hen we made our statement in November, we eliminated certain ms in dispute and cut them down to $700,000.

Mr. PAYNE. Was that the receiver?

Mr. NOTTINGHAM. The receiver for our own benefit and working that basis. They claim $400,000 overpayment on the wooden- ip contract.

Mr. PAYNE. When you say "they," whom do you mean? Make it ain.

Mr. NOTTINGHAM. The New York district office maintained $400,-) overpayment and there was also that dispute as to the cancella- n. The Fleet Corporation maintains there was not a cancella- n, and the receivers at Groton have maintained that there was a ncellation.

Mr. PAYNE. What are the alternative suggestions?

Mr. NOTTINGHAM. That they continue the receivership, cut off the pay roll—they are still carrying the naval architects; they have raised salaries up there and carrying a rather topheavy organization—to cut those down as much as possible and to carry through to completion.

Mr. SCOTT. If the receivers have dissipated $800,000 since last November, it is either a case which the Emergency Fleet Cor-
389 poration did not know in November what they were talking about or do not know now what is the situation when they finish the ships under the receivership. Under the receivership there is certainly no possibility of reducing your overhead by taking on additional work, which is the only sane way to reduce your overhead and maintain your efficiency. So that the only hope, so far as I can see, to reduce your overhead is either to reduce it by reducing efficiency or else increase your work in the yard. Under the receivership I do not believe the court would permit you to take on any more work. One of the things that appealed to Mr. Payne and me was the fact that Mr. Morse was going there and putting other work in the yard which would reduce to some extent the overhead applied to our ships.

Mr. NOTTINGHAM. It would hardly reduce the overhead applied to our ships now, but it would have a tendency of having them work on these contracts and put in a full day's work, while now the men are loafing. At the time we had this under discussion, in November, they expected to be out on the 15th of April. That was their estimated period of delivery at that time.

Mr. SCOTT. When this matter first came up and it was shown that the profit would probably be $300,000, I know that at that time the receivers thought that was a ridiculous figure, that they would do much better, that it was absolutely sure they would wipe out the overpayments and show a profit and make some payment to the creditors, and it was on those figures that the original contract was made, which provided for the $500,000; so that when we took it up at this time we assumed at least that condition existed now, so that
390 in agreeing to pay the $250,000 we were only paying out a profit due the Groton Iron Works, and it was specified in the agreement that $500,000 we would have, which was to reduce our mortgage in that amount. With that information in hand, with the terms of the contract agreed upon, our people went before the court, and I think perhaps that situation ought to be developed before the commissioners, so that everybody will know what our standing is there at the moment.

Mr. GORDON. After our conference here and getting the proposition that we would have a fund of $250,000 put up to pay 20%

on the dollar, we figured that Mr. Morse would have to raise $200,000 or $250,000 more to clean up the receivers' certificates and take the claims, and he has made his arrangements to have that money; and we went before the court and put our offer in writing with Mr. Nottingham's full approval, and Mr. Marsh's, who is the Fleet Corporation's attorney; and notice was sent to all the creditors of that offer, which means 20% cash offer and the balance 80% in the next six months and a year. That notice was sent to all the creditors and the hearing adjourned for a week, and last week they had a hearing after the notice, and every creditor except one assented to it, and the court said that he should approve of the sale of the assets on the basis of this offer. The details of that are being worked out, and Mr. Marsh was waiting in the judge's office that day and got the wire from Mr. Nottingham, and he came in and stated to the judge that the contract which had been drawn by our counsel in New York and sent down to be signed here had been held up on account of the auditor's department, but that everything would be in shape on Tuesday and the contract would be signed and the
391 money forthcoming Tuesday. The court then adjourned until Wednesday, asking Mr. Marsh if he was sure——

Mr. NOTTINGHAM (interposing). We did not say anything about signing; we said we would have action Tuesday.

Mr. GORDON. Mr. Marsh said that the money would be there Wednesday if he would adjourn it, and the court did then adjourn until Wednesday—that is to-morrow—and we have our money there, and Mr. Morse has got it ready to go ahead with his part and has arranged surety companies and the bond, and the creditors have agreed to accept this proposition.

Mr. DEAN. May I ask how much Mr. Morse has paid out in connection with receivers' fees?

Mr. GORDON. That amount of the receivers' fees has not been determined. The receivers have claimed for themselves and their counsel $110,000—they claim for services. The judge will decide upon whatever fee he allows them to-morrow; but, whatever it is, Mr. Morse has got to pay.

Mr. DEAN. He has got to clean that up.

Mr. GORDON. He has got to clean that up.

Mr. DEAN. How much total will you raise at this time?

Mr. GORDON. About $250,000.

Mr. DEAN. The amount involved——

Mr. SCOTT (interposing). $40,000 comes back to us.

Mr. GORDON. $40,000 comes back to you, and there is $95,000 to the First National Bank of Boston on receivers' certificates; prefer-

ence claim to the Railroad Administration from about $103,000—about $80,000 was allowed. There is a preferred labor wage claim of $54,000; there are some other small preference claims. So
392 that the total amount he has got to pay is somewhere between $225,000 and $250,000—approximately equal to the amount you are advancing. In fact, he has got to pay $275,000, to pay these creditors; $250,000 was not enough. When we got to the receivers, we found the claims they gave us were wrong, so that that added $25,000 additional.

Mr. DEAN. Nothing was said about that in the contract. That was a court order.

Mr. GORDON. It was a court order for him that he do these things. I have a copy of the court order.

Chairman BENSON. Would Mr. Morse mind telling the board whether he anticipated any orders for particular work in the future?

Mr. MORSE. We have; yes, sir; we can go ahead.

Chairman BENSON. Have you or have you not a definite statement as to whether or not the corporation has overpaid $400,000?

Mr. NOTTINGHAM. The books show an overpayment on the Noank yard, I believe, of about $400,000. I understand some of that has not been reconciled.

Col. ABADIE. That is substantially correct. There may be a small difference.

Mr. NOTTINGHAM. I mean there are some items. I mean how much is earned and how much is not earned?

Col. ABADIE. How much will be allowed for amortization?

Mr. NOTTINGHAM. No; it does not under these claims.

Chairman BENSON. Cash actually paid out.

Mr. NOTTINGHAM. I think they have reconciled cash actually paid out, but I think it is a question of how much is actually earned under the contract.

Chairman BENSON. Have you a statement as to how much has been earned?

393 Col. ABADIE. $400,000. That is what the present figures show. That is not taking into consideration the question of cancellation.

Chairman BENSON. Then, if we advance this $250,000, we will have advanced $600,000. Is that the proposition?

Col. ABADIE. Yes, sir.

Commissioner SCOTT. That is it from our standpoint.

Mr. GORDON. The receivers have a claim on that Noank yard of over $1,000,000. There must be some discrepancy between your figures. Apparently they do not agree with your figures.

Col. ABADIE. The claim has never been considered by us; we do not now what it represents—am I correct on that? And we doubt ery much as to its being worth one cent on the dollar.

Mr. GORDON. You claim so, and yet their counsel told me the other ay that he thought Mr. Morse was a fool to make a settlement on is Noank yard, because he had a perfectly good claim against you r $1,000,000.

Col. ABADIE. I never heard of it.

Mr. NOTTINGHAM. I guess you know whether there was a cancella-on or not.

Chairman BENSON. I would like to ask if there is any legal ob-ction to our advancing this $250,000, Mr. Dean?

Mr. DEAN. No; it is a matter of judgment in the discretion of the ard.

Chairman BENSON. Then it is just a question of a business oposition.

Mr. DEAN. That is all.

Mr. NOTTINGHAM. When you figure your profit—this is a question r Mr. Morse to consider more than the board—and that is taking these cost estimates here and stating that our liability for payment is only the total value of this contract, which is about $16,600,000. If that will carry the construction through the end, all right; but if it does not, what arrangements can you ke? That is for Mr. Morse to consider.

Col. ABADIE. In other words, is Mr. Morse going to be able to ance himself so as to complete these ships without our having put up more money from now on for the completion of the ships?

Mr. GORDON. He will have to conduct himself in accordance with contract which we drew in New York the other day—do only what required under their contract. They asked Mr. Morse to give a nd; he can not do anything more than that.

Mr. MORSE. Regarding the difference in the wooden contracts, en we had that arrangement it was agreed between us that what-r was due under the wooden contract—the yard said at t time there was not anything due us, but there was not thing due them. The statement of the Emergency $1,600,000. agreed to leave it to Judge Payne entirely to take the ures; and Mr. Gordon and the gentleman representing us—. Gordon representing us and Mr. Nottingham representing you—re to have the figures. It has been over four or five months, and y never could get the figures; the Emergency Fleet Corporation ld not furnish them; we have not seen them; can not get them;

haven't yet, haven't to this minute, but yet we have had orders to get them. I tried every way; they tried every way. Mr. McAdoo's office tried to get them; Mr. Nottingham said that he tried to
395 get them; it is impossible to get them from the Emergency Fleet Corporation. They have the books. The receivers, we went to them; they did not want us to loose the job; we could not get it from them. Rather than to have Judge Payne troubled the other day, Mr. Scott asked me to consent. I asked our men what the lowest we had due us was. They said, leave it out before you take less than $600,000. Mr. Scott induced me to take one wooden ship complete; one wooden ship—hull, engines and boilers that went with it. I agreed to that. Now, I certainly would just as soon you cancelled that contract; I would just as soon take my chances of getting from these gentlemen $600,000 to $1,000,000, and I will get it just as sure as my name is Morse, and I don't believe you can substantiate any such figures as you produced. That is from my experience.

I am perfectly willing to leave the wooden yard out or carry on my contract with them. At that time when we made the contract with Virginia they told me $1,500,000 would be profit at Groton on the steel contract. After a while it went along and it simmered down to $600,000, then to $350,000. We have not had anything to do with the yard since; we have not received a dollar from it; we have not seen the books. Now, it is to-day $900,000 in debt, or the books of the Emergency Fleet Corporation have changed $2,400,000 in three months without anybody having any access to it. What more they have changed I do not know; they may change $2,400,000 in the next four months. Those are the figures; those are the facts.

To substantiate some of the figures in this room, Mr. Stevens and Mr. Donald sitting there, Mr. Hurley sitting here, the same Emergency Fleet Corporation told them that they would take a
396 great deal of risk if they advanced us $100,000 in Virginia. They had several days of debate whether they should. At last they agreed. But it turned out in three months they gave us seventy-five of it. But to show you how accurate their figures are, they were not within $2,500,000 of it. And after that meeting the same Emergency Fleet Corporation came down to our office and acknowledged to me that they did not have any books, that they did not know anything about it, and asked me for permission to get their accounts from our books. This is the gentleman who is criticising our books now and our methods of doing business.

Col. ABADIE. Are you referring to me as the gentlemen who has been criticising your figures?

Mr. MORSE. I am referring to the Emergency Fleet Corporation.
Col. ABADIE. I misunderstood you.
Chairman BENSON. I don't think there is anything personal in this.
his.
Mr. MORSE. That is the corporation which produced the figures.
don't know what changes there are in it; that is the trouble I
ave had all along. Those figures have changed in Groton within
2,500,000 in the last four months.
Col. ABADIE. The list that you spoke of.
Mr. NOTTINGHAM. This is the statement produced. They claim
have disbursed on the wooden contracts $ [Reads from
atement]; the Emergency Fleet Corporation admits credits against
at of $, leaving a debit of $454,413.63, against which would be
pposed any claim for cancellation, provided one is allowed, and I
nderstand there are some items in that $454,000 which the receivers
do not agree to and which are still under discussion. That is
07 the question I understand as to the payment on the basis you
are figuring on those hulls not completed, as to paying a per-
ntage of the total contract price of those hulls on the basis of the
ercentage of completion. The advance is $3,690,398.80.
Mr. MORSE. I can only figure by analysis from our experience. At
irginia we were charged when the contract was made with twelve
ilers at $57,000 a set, which the Emergency Fleet Corporation paid
ss than $50,000 for. In putting out the boilers they produced
ater-tube boilers instead of Scotch boilers. The water-tube boilers
ere brought for $42,000. We never yet have had any credit for any
fference. As I understand it, the steel is charged to us when our
ntract was made, so much steel at such a price per ton, which is a
ofit to the steamship company. In figuring up our Virginia con-
act, we contended that we reimbursed the Shipping Board with the
oney they have expended in it. They said they did not mean that;
was what they charged not paid out. They asked for Mr. Not-
gham's opinion; he has given it—it was what they paid out. The
nergency Fleet Corporation said "no, that is not right; we want
neone else's opinion"; and yet since September 25 Mr. Nottingham
s been trying with us to get a statement from the Emergency
eet to know what to charge us, and we can not get it—haven't it
day. I imagine from that that these charges against Groton are
elve boilers and twelve sets of engines. I know that they dupli-
ed some of the charges on the first six sets. But that is a matter
adjustment hereafter; and I don't think your figures are right
ll, or else I would not want to go into it.
Mr. PAYNE. Who is the gentleman Mr. Morse is talking about in
Emergency Fleet Corporation?

398 Mr. NOTTINGHAM. I think Mr. Overend in Baltimore. There has been that question whether they would be charged actual cost or schedule prices.

Mr. PAYNE. Don't discuss that; that is not the question. I would like to have one of you state what are the alternative propositions. There are two questions: Will you make the Morse trade or not; and if you do not, what is the alternative?

Mr. DEAN. The alternative is to have Mr. Frick——

Mr. PAYNE (interposing). You have told us about Mr. Frick. That does not get us anywhere; that is merely a step to get information; but what is the alternative proposition?

Mr. DEAN. The receivers to remain and complete the building of the ships.

Mr. PAYNE. On the basis that they were to finish these ships for $1,400,000 by the 15th of April, they have expended $600,000 a month, and they are not going to finish the ships for ninety days. Is that the alternative?

Mr. DEAN. Yes; I think that is the alternative.

Mr. PAYNE. There is only one thing to do, Mr. Chairman, to carry out the Morse trade—make the advance, in my judgment.

Chairman BENSON. That is the reason I asked the question whether there was any legal objection.

Mr. DEAN. No.

Chairman BENSON. That is my view.

Mr. SCOTT. I move that it be done.

Mr. DONALD. I second it.

Chairman BENSON. These other questions will be adjusted after the contract has been made. That is understood.

399 Mr. NOTTINGHAM. I might state that we have provided if there is in $400,000 on this contract the account is left open on that both ways so far as that is concerned.

Mr. PAYNE. What do you mean "left open"?

Mr. NOTTINGHAM. We have established the cancellation fee on his wooden ships, but so far as making an audit and adjustment on a separate basis of accounting is concerned, that matter is left open. I understand that matter was taken up in New York.

Mr. PAYNE. But the trade settles the cancellation damages as stated by Commissioner Scott.

Mr. NOTTINGHAM. Yes, sir.

Mr. DONALD. That is an exchange on two ships for the Noank yard?

Mr. DEAN. Yes.

Chairman BENSON. It is moved and seconded that we consummate this trade with the Morse people. All in favor please say aye.

(Motion carried.)

Chairman BENSON. Then we will proceed to carry that out and hasten it as much as you can.

Mr. GORDON. Mr. Nottingham, have you the contract?

Mr. NOTTINGHAM. Yes, sir.

Mr. GORDON. Is that the same form as approved in New York?

Mr. NOTTINGHAM. Yes, sir; you have the copy; there is one word in Article XII, last line——

Mr. GORDON. Might I ask whether the check for $250,000 will be available for use in court to-morrow?

Mr. SCOTT. I guess everybody understands that. If you get in touch with Mr. Nottingham——

Commissioner BENSON. I told him to hasten it so as to help you out in your arrangements in case it is possible to do it.

400 DEFENDANT'S EXHIBIT Y

Financial statement—Receivers Groton Iron Works, March 20, 1920. Fred'k Conlin and P. Le Roy Harwood, receivers Groton Iron Works, steel shipbuilding and engineering, Groton Conn., builders for United States Shipping Board Emergency Fleet Corporation W. Z. White, comptroller.

MARCH 20, 1920.

Mr. W. WARDE NOTTINGHAM,

Legal Division, United States Shipping Board Emergency Fleet Corporation, Washington, D. C.

DEAR Mr. NOTTINGHAM: In accordance with your request to Mr. Harwood yesterday, I am enclosing copy of statement which we prepared showing the estimated status of the Groton Iron Works with the Emergency Fleet Corporation at the completion of the present contracts.

A copy of this statement has also been sent to District Comptroller E. E. MacNary.

Very truly yours,

W. Z. WHITE, *Comptroller.*

Reply to Groton plant

401 *Status of Groton Iron Works with Emergency Fleet Corporation at completion of contracts*

Regular advances contract 57 S. C.	$11,275,372.57		
Less mortgage	$83,333.33		
Interest	3,487.72		
	86,821.05		
		$11,188,551.52	
Advances on c/o increase labor costs		350,000.00	
Total advances ship const., contract 57 S. C.			$11,538,551.52
Total advances ship const., contract 225 S. C. to 2/29/20 (net)			3,359,023.05
Total advances, contracts 57 and 225			14,897,574.57
Estimated balance necessary to complete			1,400,000.00
Total estimated advances account of contracts at completion			$16,297,574.57
Estimated sales price:			
Contract 57 S. C. @ $202.00 d. w. t.		$10,665,600.00	
Contract 225 S. C. @ $200.00 d. w. t.		5,640,000.00	
Total, both contracts			16,305,600.00
Estimated balance due Groton Iron Works on ship construction			8,025.43
Additional liabilities, receivers' certificate:			
Revolving fund	$50,000.00		
Plant	89,000.00		
Retroactive plant	1,416.92		
		$140,416.92	
Interest accrued 2/29/20, receivers' certificates		3,610.18	
Special plant fund		42,575.00	
Petty cash advance		7,500.00	
Total			194,102.10
Balance due Emergency Fleet Corp			$186,076.76
402 Credits at completion of contracts 57 and 225 S. C.:			
Revolving fund and petty cash on hand		$57,500.00	
Stores inventory est		300,000.00	
Est. cancellation claim, cont 225	$1,250,000.00		
Less actual labor, O. H. and material charged to contract 225	278,807.36		
		971,192.64	
Due from E. F. Corp. claims, etc			1,328,692.64
Balance due from E. F. Corp. at completion of contracts			$1,142,615.88
Mortgages on G. I. W. plant held by E. F. Corp		$1,800,000.00	
Interest accrued to 2/29/20		169,183.67	
			$1,969,183.67
Of which amount has been paid but deducted above from advances, contract 57:			
Principal			$83,333.33
Interest			3,487.72
			$86,821.05

403 DEFENDANT'S EXHIBIT Z

Three interdepartmental letters—Fleet Corporation, dated April 1, 3, 3, 1920. This exhibit submitted in full in volume of physical exhibits at page 67.

DEFENDANT'S EXHIBIT A–1

Executive order, July 11, 1917

Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.

By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an act of Congress entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance
404 of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

WOODROW WILSON.

THE WHITE HOUSE, *11 July, 1917.*

DEFENDANT'S EXHIBIT B–1

Executive order, June 18, 1918

Delegating to the United States Shipping Board Emergency Fleet Corporation the powers granted to the President by the act of Congress amendatory of the emergency shipping legislation, and approved April 22, 1918.

By virtue of authority vested in me by the act of Congress, entitled "An act to amend the emergency shipping fund provisions of the urgent deficiency appropriation act, approved June fifteenth, nineteen hundred and seventeen, so as to empower the President and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes," approved April 22, 1918, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me by said act.

WOODROW WILSON.

THE WHITE HOUSE, *18 June, 1918.*

405 DEFENDANT'S EXHIBIT C–1

Executive order, December 3, 1918

Delegating to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, powers granted to the President by acts of Congress relative to the emergency shipping fund and approved on or prior to November 4, 1918.

Whereas, by Executive order No. 2664, dated July 11, 1917, I delegated to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency Shipping Fund" of the urgent deficiency appropriation act approved June 15, 1917; and

Whereas, since the issuance of said Executive order, the said powers granted in said act have been variously affected or extended by the section entitled "Emergency Shipping Fund" of the urgent deficiency appropriation act approved October 6, 1917, by public act No. 138, Sixty-fifth Congress, approved April 22, 1918, amending said section of said act of June 15, 1917, and by the sections entitled "Emergency Shipping Fund" in the sundry civil appropriation act approved July 1, 1918, and in the first deficiency appropriation act, 1919, approved November 4, 1918, respectively:

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said order No. 2664, but in no way limiting or restricting the effect thereof, or of acts heretofore done in pursuance thereof, I do hereby delegate all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Cor-
406 poration shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways and piers, and to constructed vessels or parts thereof or charters therein; to the operation, management, and disposition of such dry docks, marine railways, piers, and vessels; and to such other matters as are not herein mentioned.

3. All acts heretofore done by said corporation or by said board, with reference, respectively, to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

WOODROW WILSON.

THE WHITE HOUSE, *3 December, 1918.*

COMPLAINANT'S EXHIBITS 1 TO 5

Are the five contracts attached to bill of complaint so marked and so printed at page 58 et seq. (Defendant's Exhibits, E, F, G, H, and I.)

407 COMPLAINANT'S EXHIBIT 6

Certificate of incorporation and by-laws, United States Shipping Board Emergency Fleet Corporation

Know all men by these presents, that we, the undersigned majority of whom are residents of the District of Columbia, desiring to form a corporation under subchapter four (4) of the incorporation laws of the District of Columbia, and in pursuance of section eleven (11) of an act of Congress entitled "An act to establish a United States Shipping Board," approved September 7, 1916, do hereby certify:

First, that the corporate name of this company shall be United States Shipping Board Emergency Fleet Corporation, and the object for which it is formed is the purchase, construction, equipment, lease, charter maintenance, and operation of merchant vessels in the commerce of the United States, and in general to do and to perform every lawful act and thing necessary or expedient to be done or performed for the efficient and profitable conducting of said business, as authorized by the laws of Congress, and to have and to exercise all the powers conferred by the laws of the District of Columbia, upon corporations under said subchapter four (4) of the corporation laws of the District of Columbia.

Second, that the existence of this corporation shall be perpetual.

Third, that the capital stock of this corporation shall be fifty million dollars ($50,000,000) divided into shares of the par value of one hundred dollars ($100) each.

408 Fourth, that the number of trustees who shall manage the concerns of the company for the first year, or until their successors are elected, a majority thereof being citizens of the District of Columbia, shall be seven (7), namely:

Name	Residence
George W. Goethals,----	43 Exchange Place, New York, N. Y.
William Denman,------	1020 Merchant's Exchange Bldg., San Francisco.
John A. Donald,-------	18 Broadway, New York City, N. Y.
William L. Soleau,-----	1361 Harvard Street NW., Washington, D. C.
Richard H. Bailey, jr.,...	1439 Fairmount St. NW., Washington, D. C.
Timothy C. Abbott,-----	2023 Park Road NW., Washington, D. C.
Ellsworth P. Bertholf,--	1462 Harvard Terrace, Washington, D. C.

The board of trustees, by the affirmative vote of a majority of the whole board, may appoint from the trustees an executive committee of three (3) members and a transportation committee of three (3) members, of which a majority shall constitute a quorum, and to such extent as may be provided in the by-laws such committee shall have and may exercise all or any of the powers of the board of trustees.

Fifth, that the place in the District of Columbia in which the operations of the company are to be carried on is at Munsey Building in the city of Washington, District of Columbia.

This corporation reserves the right to amend, alter, or change any provision contained in this certificate of incorporation in any
409 manner prescribed by statute, and all rights conferred on stockholders herein granted are subject to this reservation.

In witness whereof, we have hereunto affixed our signature and als this 16th day of April, A. D. 1917.

WILLIAM DENMAN.	[SEAL.]
JOHN A. DONALD.	[SEAL.]
GEO. W. GOETHALS.	[SEAL.]
T. C. ABOTT.	[SEAL.]
E. P. BERTHOLF.	[SEAL.]
RICHARD H. BAILEY, Jr.	[SEAL.]
WILLIAM L. SOLEAU.	[SEAL.]

The by-laws attached to above certificate of incorporation are subitted in full in volume of physical exhibits as No. 6 at page 71.

COMPLAINANT'S EXHIBIT 7

Answer of Fleet Corporation

suit instituted by town of Groton et al. against Groton Iron Vorks, United States Shipping Board Emergency Fleet Corporaon et al., in the Superior Court, county of New London, December 3, 21, to foreclose tax lien against Groton Iron Works shipyard roperty. The following excerpts are taken from this answer:

"The defendant, the United States Shipping Board Emergency leet Corporation, brings this cross complaint against its codefendnts, Groton Iron Works, the Travelers Bank & Trust Company, annie R. Morse, and Lewis Swift, jr., and respecfully shows to this urt:

irst count.

1. The defendant, the United States Shipping Board Emergency Fleet Corporation, is a corporation organized and existing by 0 virtue of certain laws of the United States of America, and was so organized and now exists in pursuance of and in obedice to the provisions of the act of Congress approved September 7, 16, known as the "shipping act, 1916," and of the incorporation ws of the District of Columbia as enacted by Congress, the dendant having been so organized on April 16, 1917, and having its incipal office in the city of Washington in said District of Columbia.

* * * * * * *

"The defendant, the United States Shipping Board Emergency eet Corporation, claims:

"1. Judgment for the amount due under said mortgages and conets.

"2. A foreclosure of said mortgages against all the defendants by ict foreclosure in favor of the defendant, the United States Ship-

ping Board Emergency Fleet Corporation, or by sale, as the court deems proper.

"3. That in case of a strict foreclosure which becomes absolute, the title to the premises may be vested in the defendant, the United States Shipping Board Emergency Fleet Corporation. * * *

"DEFENDANT, THE UNITED STATES SHIPPING
"BOARD EMERGENCY FLEET CORPORATION,
"By ALLAN K. SMITH,
"*Assistant United States Attorney.*

"Of counsel:
"DAY & BERRY,
"*50 State Street, Hartford, Conn.*
"RUSHMORE, BISBEE & STERN,
61 Broadway, N. Y. City."

This exhibit is submitted in full in volume of physical exhibits as No. 7 at page 77.

411 COMPLAINANT'S EXHIBITS 8, 9, 10, AND 11

These are the same as defendant's Exhibits A, B, N, and O, respectively.

COMPLAINANT'S EXHIBIT 12

Five resolutions of Fleet Corporation

Resolved that C. X. Bookwalter, district officer, and H. W. Eastman, district auditor, or W. J. Mann, assistant district auditor, of this corporation are hereby designated and fully authorized to countersign checks drawn by the authorized representative or representatives of the Groton Iron Works against the account deposited or said Company with the Seaboard National Bank, New York City. The authority hereby delegated cancels any previous authorization or designation made in connection with this account.

I hereby certify that the above is a true and correct copy of a resolution passed at a meeting of the board of trustees of the United States Shipping Board Emergency Fleet Corporation held on January 19, 1918.

[SEAL.] J. P. JAMES,
Acting Assistant Secretary.

Resolved that an account be established with the American Exchange National Bank of New York in the amount of $1,026,480.00 for the account of the Groton Iron Works, contract No. 225, and that

District Officer Frederick Conlin or Assistant District Officer H. O. Trowbridge and District Auditor George J. Strong or Assistant District Auditor C. H. Cornell be authorized to countersign
412 checks against said account when signed by the duly authorized agent of the contractor.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted at a meeting of the trustees of the Emergency Fleet Corporation held on June 5, 1918.

[SEAL.] J. P. JAMES,
Acting Assistant Secretary.

Resolved that an account be established with the New London, City National Bank, of New London, Connecticut, in the amount of $120,425.00 for the account of the Groton Iron Works, contract No. 57, and that District Officer Frederick Conlin or Assistant District Officer H. O. Trowbridge and District Auditor George J. Strong or Assistant District Auditor C. H. Cornell be authorized to countersign checks against said account when signed by the duly authorized agent of the contractor.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted at a meeting of the trustees of the Emergency Fleet Corporation held on June 5, 1918.

[SEAL.] J. P. JAMES,
Acting Assistant Secretary.

Resolved that an imprest fund be established in the First National Bank of Boston, Mass., in the amount of $500,000 for the account of the Groton Iron Works, and that F. Conlon, district officer, or H. O. Trowbridge, assistant district officer, and G. J. Strong, district auditor, or C. H. Cornell, assistant district auditor, be authorized to countersign checks against this account when signed by the duly authorized representative of the contractor.

413 I hereby certify that the above is a true and correct copy of a resolution passed at a meeting of the board of trustees of the United States Shipping Board Emergency Fleet Corporation held on September 19, 1918.

[SEAL.] J. P. JAMES,
Acting Assistant Secretary.

Resolved that the treasurer or assistant treasurer be, and either of them hereby is, authorized and directed to sign checks against the deposit in the Seaboard National Bank of New York City for the benefit of the Groton Iron Works, and that the authority hereby delegated cancels any previous authorization or designation made in connection with this account.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the board of trustees of the Emergency Fleet Corporation at a meeting on January 15, 1919.

[SEAL.] J. P. JAMES,
Acting Assistant Secretary.

414 COMPLAINANT'S EXHIBIT 13

Extract from the Congressional Record, vol. 55, 65th Congress, or remarks on H. R. 3971, urgent deficiencies appropriation, act of June 15, 1917.

Remarks in the Senate May 18, 1917

Mr. NELSON. I thank the Senator. The hearings have not been previously available. This has been considered as a sort of confidential matter.

Mr. President, this bill contains some very unusual and far-reaching provisions. As I am obliged to leave the Chamber to attend a meeting of a committee of conference, I can only at this moment refer to one or two of the provisions of the bill. It authorizes the President—which, of course, in this case means the Shipping Board—

(b) Within the limits of the amounts hereby authorized, to modify, cancel, or requisition any existing contract for the building, production, or purchase of ships or material; and if any contractor shall refuse or fail to comply with the contract as so modified or requisitioned the President may take immediate possession of any factory of such contractor or any part thereof without taking possession of the entire factory, and may use the same for such times and in such manner as he may consider necessary or expedient.

It not only authorizes the Shipping Board to take possession of the ships which have been partially completed, to commandeer them, but it authorizes the board to change and modify contracts which have been made between the shipbuilder and the man who has a ship in process of construction. Then what is the remedy provided? That the President shall fix the compensation, and
415 if the owners are not satisfied with the compensation the President fixes they are to receive 50 per cent of what he allows them, whatever that may be, and for the balance they are to go into court.

* * * * * * *

Remarks in the Senate May 18, 1917

Mr. SMOOT. In this connection I desire to call the Senator's attention to the testimony given before the committee, on page 131 of the

timony, while we were discussing the question of taking over the glish ships. By the way, I will say to the Senator that I have amendment which I will offer providing that we can commandeer the ships in the country with the exception of those that are being lt for a foreign country. After taking in the committee the same sition that is taken by the Senator to-day, General Goethals made s statement to me:

General GOETHALS. Senator, would you mind our doing this, tak- over in the shipyards all shipping not contracted for by England English firms?

Senator SMOOT. Every pound of it.

General GOETHALS. And authorizing us to expend money to expe- e the completion of British ships that are on the ways?

Senator SMOOT. Undoubtedly.

General GOETHALS. All right, then; give me that, and make my propriation $400,000,000 and my authorization $750,000,000, and me do that.

* * * * * * *

Remarks in the Senate May 18, 1917

Mr. KNOX. Mr. President, there is no danger in conferring the wers described in the shipping clauses of this bill. There is no danger except to the United States if they be withheld. The power, in my judgment, will never be used to its maximum extent. I doubt whether it will ever be drawn upon largely all, because when you come to analyze it it is only after all the wer of the Government to utilize the facilities of the shipyards the country and of those enterprises which produce iron, steel, l other materials that go into the construction of ships, so that Government may be served promptly and effectively.

Now, how is it as to the shipyards? We know perfectly well that can not build ships any faster than the facilities of the shipyards l permit us. I have the statement of fact not only from the nufacturers who are engaged in manufacturing steel which enters o the construction of ships but the other materials which enter o that construction that they are prepared to-day to deliver to United States material as rapidly as the facilities of the ship- ds can use it.

Mr. President, a ship is a thing that can not be built in a day or eek or a month. The keels have to be laid upon the stocks, the terial has to be assembled, the workmen have to put it into place, armament, if it is an armored ship, the furnishing, and equip- nt have all got to be gathered together. If the Government is to ceed efficiently it must have the power which at least psychologi- y will induce prompt furnishing of goods, materials, and labor.

I doubt, sir, whether it will ever be necessary for the President of the United States to commandeer any shipyard, any rolling mill, any steel works, or any other factory in the United States to expedite this work, but it is a good thing in the event of the unforeseen happening that he shall have that power.

* * * * * * *

417 Remarks in the Senate May 18, 1917

Mr. SMOOT. That is the object of the amendment.

Mr. President, if the Senate will indulge me for a short time, I desire to call attention to the testimony that was given before the committee on this subject. In doing so I shall take great pains not to read any testimony that has not already appeared in the public press. I am not going to violate the understanding that any confidential testimony given before the subcommittee should not be made public.

Mr. President, the program as mapped out by the Shipping Board is for the construction of 3,000,000 tons of ships in the next 18 months. That includes steel ships and wooden ships as well. The contract price for the wooden ships will be about $135 a ton and for the steel ships it will be $153 a ton. General Goethals made this statement in relation to the program:

"Assuming that we must pay $150 a ton for steel ships, 3,000,000 tons will require $450,000,000, and I have fixed the round sum at $500,000,000 for the construction program. If we took over the ships that are now on the stocks—on the ways—assuming that the amount is a million tons and that we may have to go to $200 a ton in order to expedite it, I figure that at $250,000,000.

"Senator SMOOT. That is the steel, you say?

"General GOETHALS. The steel.

"Senator SMOOT. Have you counted the wood?

"General GOETHALS. The wood will come in on the $50,000,000 we have and part of this $500,000,000 that I have just asked for."

Senators will notice on page 3 of the bill, beginning on line 7, down to and including line 14, there is a provision appro-
418 priating $500,000,000 for the cost of construction of ships authorized therein. The previous paragraph authorizes the purchasing or requisitioning of ships and appropriates $250,000,000 for that purpose.

Mr. President, contracts which have been made up to date by Gen. Goethals are for 214,000 tons, and that was to be paid for out of the $50,000,000 appropriated to the Shipping Board for the purchasing of ships. Mr. Denman, the chairman of the board, has

contracted for 72,000 tons, to be paid out of the same appropriation, making up to date, contracted for by both, 286,000 tons. General Goethals said it was impossible for him to make any further contracts until there was another appropriation made, although he has arrangements made to enter into contracts to carry out the program of the 3,000,000 tons; and, as stated by the Senator from Alabama (Mr. Underwood), the general stated that he intends to have some of these ships constructed outside of shipyards, for he called the attention of the committee to the fact that there was one bridge-building concern which is willing now to enter into contracts with the Government at a price of $153 per ton, to deliver in six months one steel ship of 5,000 tons capacity, and after that to deliver one ship of the same capacity every day so long as the Government may desire them. So there is no question as to our ability to have the ships built within the limit of 18 months, as provided in this program.

This, Mr. President, does not in any way have reference to the amount of shipping that is now under way.

Remarks in the House May 28, 1917

Mr. FITZGERALD. * * * This legislation is of a very
419 radical, unique, and unusual character. It confers the most comprehensive powers ever proposed upon the President of the United States. It authorizes him to requisition the entire output of a factory, a portion of a factory, to take over ships, to cancel contracts, to assume contracts, to suspend contracts, to operate the ships, and, when the powers given here are exercised, provision is made to make just compensation for the taking over. Authority is given to the President to ascertain in a summary manner what the just compensation shall be, and if that compensation so determined shall not be satisfactory to the person affected then he shall be paid 75 per cent of that sum and given a right to proceed against the United States in the Court of Claims to recover such additional sum as will make just compensation. Under the Senate amendment the President is authorized to delegate all of those powers of a radical and comprehensive character to the general manager of the United States Shipping Board Emergency Fleet Corporation. That is a corporation organized by the Shipping Board under the authority conferred by the shipping act for the purpose of having constructed ships deemed essential at this time.

The general manager of that corporation is Major General Goethals, who was selected by the Shipping Board to take control of the construction of these ships, and the intention of the Senate

was to express its desire that as full power as possible should be given to Gen. Goethals. It appeared at once, however, that it would be a most extraordinary legislative act for the Congress to provide that these unique, radical, and comprehensive powers might be delegated to an officer of a private corporation, and
420 could not be granted to anyone else, so the Committee on Appropriations has modified that provision so as to devolve all the power upon the President and authorize him to exercise them through such agency or agencies and at such times as he shall determine to be advisable.

(Extract from the Congressional Record, vol. 55, 65th Congress, of remarks on H. R. 3971, urgent deficiencies appropriation act of June 15th, 1917.)

Remarks in the Senate June 13, 1917

Mr. UNDERWOOD. Mr. President, when the bill originally passed the Senate the clause that is now under discussion read as follows:

"The President may direct the general manager of the United States Shipping Board Emergency Fleet Corporation to exercise the power and authority hereby vested in him."

I thought at that time that that was ample power.

Mr. LODGE. Vested in whom?

Mr. UNDERWOOD. In the President.

Mr. LODGE. That is what I thought.

Mr. UNDERWOOD. I repeat, I thought at that time that that was ample power for the transfer of this authority. The House did not take that view. They struck out the words "Emergency Shipping Board Fleet Corporation" and inserted the words "such agency or agencies." The change was in dispute between the House and the Senate conferees for some time. The House bill did not have any provision for the transfer of the money along with the authority, and when the bill came to conference the House conferees suggested that the langauge was probably not broad enought to carry the
421 money that the President had a right to expend along with the authority to expend it. I did not personally take that view, and I do not now. I think that when the right to transfer the authority to some one else was conferred it carried with it the right to spend the money, but the conferees on the part of the Senate did not care to stand on a technicality, and this language was finally agreed on tentatively in place of what was in the Senate bill:

"The President may exercise the power and authority hereby vested in him and expend the money herein and hereafter appropri-

ated through such agency or agencies as he shall determine from time to time: Provided, That all money turned over to the United Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended."

After the first part of the provision I have read was tentatively agreed to by the conferees of the two Houses, I called on Gen. Goethals personally, because I had the same feeling about the matter that the Senator from Massachusetts (Mr. Lodge) has expressed. I desired that Gen. Goethals should have the unlimited right to carry out the shipping contracts and that the Government should get advantage of his great executive ability. Therefore, before the conference agreed on the matter, I called on Gen. Goethals personally to ascertain whether such provision would be within the line of his endeavors and whether he could carry out his work under this authority. He assured me that the language was entirely satisfactory to him; in fact, that he wanted the change made; that he thought it would be better to put in the words "such agency or agencies," than to confer this authority upon a Government
492 officer, naming him, because the responsibility was on the President. Of course, under the Senate language Gen. Goethals could have been thrown out at any hour by his discharge as general manager of the Fleet Corporation, and under the terms of the conference bill he can be discharged at any hour by the President changing the agency. So the matter has not been affected in that respect.

I was told by Gen. Goethals that under the terms of this bill, if passed, he would be named as the agency, or rather that the Emergency Fleet Corporation, of which he is general manager, would be named as the agency to expend this money. He desired the authorization to come in that way for this reason. He said that it would give him a broader latitude in which to make his contracts. He could make them as a corporation, and not be bound by the requirements of law that would restrict his action if he made them as a governmental officer; in other words, if he is designated as a governmental officer he would probably have to publish advertisements for bids in many cases, while acting for a corporation he would not have to do so. As a governmental officer in carrying out this provision he would have to make many reports and be delayed by red tape and technicalities that would not embarrass him if he were carrying on the transaction acting for a corporation. Of course, the corporation is owned by the Government and controlled by the Government; the Government is the entire corporation; but he expressed to me his view that he would have a greater latitude. Then

he asked that this language be put in, in addition to what had been tentatively agreed to by the conferees:

"Provided, That all money turned over to the United States
423 Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended."

In other words, he wants to spend this money as he is spending the $50,000,000 which were heretofore given to the Fleet Corporation by the Congress. Although I am not sure, if it were turned over to the Fleet Corporation, that this proviso would be necessary, yet Gen. Goethals himself thought it was wiser to put in the provision in order that his hands might not be tied in any way by technicalities.

Now, having got the information directly from the source, and being assured that the Fleet Corporation would be designated as the agency to spend the $500,000,000, understand not the $250,000,000 for the purchase of vessels, and not the $5,000,000 for the operation of the ships, because that will go to other sources, but the $500,000,000 that is to be provided for the building of the ships is to be turned over to the Emergency Fleet Corporation, of which Gen. Goethals is not only the head, but the entire operating authority. The Senate conferees then agreed, not to the House amendment, because it was entirely different, but to the tentative proposition that was worked up by the conferees of the two Houses.

Mr. LODGE. And which has now been presented?

Mr. UNDERWOOD. And which is now in the conference report.

Mr. LODGE. That includes an addition that Gen. Goethals desired?

Mr. UNDERWOOD. It does.

Mr. LODGE. Well, Mr. President, of course, if Gen. Goethals is satisfied with that provision in the law, I have no objection to make.

The reason I called attention to it was the disappearance of
424 the name of the office which he holds; and I know—it came to me no later than yesterday—that there is an effort on foot to try to drive him from office. I know that. I was shown a letter that it was proposed to send and that may have been sent to every Member of the Senate and of the House, the object of which was to have Congress investigate Gen. Goethals and ask why more had not been done and why he did not favor wooden ships, the purpose being plainly to drive him from office. I advised against the sending of the letter; I though it would be unwise, and that is what rendered me suspicious.

Mr. UNDERWOOD. My attitude in reference to this matter when it was before the Senate before was exactly the attitude of the Senator

from Massachusetts, and it has not changed. Of course, I do not know about the efforts being made, as the Senator suggests, to drive Gen. Goethals from office. I think it would be a most unfortunate thing for the Government should it be consummated.

Mr. LODGE. It would be a disaster.

Mr. UNDERWOOD. But I will say that, so far as that attitude is concerned, it is not affected by this bill, because if we named him as general manager of the corporation they could remove him just as well as they can if he is appointed the agency.

Mr. LODGE. That is true.

Mr. UNDERWOOD. And it is really not intended to appoint him personally the agent. He does not want it to come to him personally as the agent. He wants the Fleet Corporation, of which he is the head, named as the agent, and then he operates through the Fleet Corporation. Now, I did not consent to this proposition until I had personally consulted Gen. Goethals about the matter and received his assurance that the language in this bill was satisfactory and the way he wanted it.

425 COMPLAINANT'S EXHIBIT 14

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
DIVISION OF CONSTRUCTION, NORTH ATLANTIC DISTRICT,
139 Center St., New York, April 17th, 1920.

GROTON IRON WORKS,
Groton, Conn.

GENTLEMEN:

1. This is to notify you that the records of the U. S. S. B. Emergency Fleet Corporation show that there has been paid and debited to you on account of the agreement of March 26th, 1920, between the Groton Iron Works and the U. S. S. B. Emergency Fleet Corporation, and the contracts to which the said agreement is a supplement, a total amount in excess of $16,155,648, after allowing for all variations of this figure as provided for in said contracts.

2. The amount to be paid you as specified in paragraph 1 of Article V of agreement of March 26th, 1920, for completing the remaining three (3) ships under contract 225 S. C. having been paid and debited to you by the U. S. S. B. Emergency Fleet Corporation, you are hereby notified that money needed to complete the said vessels must be furnished by you from this date forward, in pursuance of the provisions of paragraph 4 of Article V of said agreement.

3. This notice applies to your pay roll embracing wages to be paid Saturday, April 24th, 1920.

Yours very truly,

(Signed) W. M. RICE,
District Manager.

(Signed) E. E. MCNARY,
District Comptroller.

426 COMPLAINANT'S EXHIBIT 15

GENERAL COMPTROLLER'S DEPARTMENT,
139 Center Street, New York City, April 19, 1920.

From: E. E. MacNary, district comptroller, North Atlantic district.
To: A. Tweedale, acting general comptroller, Washington, D. C.
Subject: Groton Iron Works.

1. Inclosed is a copy of a letter prepared by district counsel, Mr. McCormack, signed by Mr. Rice and myself, notifying the Groton Iron Works we have paid the full amount called for in contract dated March 26.

2. We believe it is advisable to meet the pay roll incurred week ending April 17, but that we make no further payments until a new authorization is issued. A summary statement is inclosed.

E. E. MACNARY,
District Comptroller.

427 COMPLAINANT'S EXHIBIT 16

APRIL 19, 1920.

Mr. W. M. RICE, *District Manager, and*
Mr. E. E. MACNARY, *District Comptroller,*
Emergency Fleet Corporation,
139 Center Street, New York City.

GENTLEMEN: I beg to acknowledge receipt of your letter of April 17th, 1920, notifying us that the records of the United States Shipping Board Emergency Fleet Corporation show that there has been paid and debited to our account a total amount in excess of $16,155,648, after allowing for all variations of this figure as provided for in contract of March 26th, 1920.

While this company has been in possession of the plants and records only for the last two weeks since the termination of the receivership, we are unable to find on the records of the company any figures which will agree with your statement, and we are indeed quite sur-

prised that the Emergency Fleet Corporation's books do disclose such a state of affairs.

Inasmuch as it will not be possible for us at this time to continue to finance the operations of the yard in the completion of the hulls called for under contract 225 S. C., we hereby make application to be allowed to use as much of the cancellation award of $500,000 given us under contract of March 26th, in connection with the cancellation of three 9,400 D. W. T. vessels as may be necessary.

Yours very truly,

GROTON IRON WORKS,
GEORGE M. STRONG,
Treasurer.

GMS.RJG.

428 COMPLAINANT'S EXHIBIT 17

GROTON IRON WORKS, GROTON, PLANT,
Groton, Conn., April 22nd, 1920.

[Telegram confirmation]

From: New York City.
To: Groton Iron Works.

Your letter April 19th received to-day. Can not grant application to use $500,000 cancellation award because contract specified. It shall not be credited until delivery of last vessel and because of other charges against you in addition to payments in full on contract. Receivers have ordered approximately $300,000 worth of material for completion of vessel, and if we pay for this material we shall charge amount against the $500,000. We have charged against you $300,000 of overpayment on Noank contract on which no credit can be given and there is due for mortgage interest $171,000. Letter follows.

RICE MACNARY.

Rec'd 8:40 A. M.
VC

429 COMPLAINANT'S EXHIBIT 18

139 CENTRE STREET,
New York, N. Y., April 21st, 1920.

GROTON IRON WORKS,
Groton, Conn.

GENTLEMEN: In reply to your letter of April 19th, 1920, received this morning, in which you make application to be allowed to use

as much as may be necessary of the cancellation award of $500,000 given you under the agreement of March 25th, 1920, it is impossible that the application be granted for the following reasons:

1st. The contract specifies explicitly that the $500,000 shall not be credited until after the delivery of the last vessel.

2nd. The receivers have ordered approximately $300,000 worth of material necessary for the completion of the three vessels. In the event that you do not pay for this material, we may decide to do so and charge the amount paid against the $500,000 when the latter amount is credited to you.

3rd. There is at the present time charged against you about $300,000 of the overpayment on contract 15 W. H. on which no credits can be given you at the present time.

4th. You are indebted for interest due on the plant mortgages to March 1st, 1920, in the amount of $171,440.01.

Very truly yours,

W. M. RICE,
District Manager.
E. E. MACNARY,
District Comptroller.

Dictated by JOSEPH MCCORMACK, *Assistant Counsel.*
JM.AW.

430 COMPLAINANT'S EXHIBIT 19

APRIL 29, 1920.

Memorandum to the trustees, Emergency Fleet Corporation

(This exhibit is set out in full in Nottingham's testimony on page 228 of the record)

COMPLAINANT'S EXHIBIT 20

Resolution—Fleet Corporation

Whereas the Fleet Corporation has advanced the sum of $16,225,167.38 under the contract with the Groton Iron Works, dated March 26, 1920, which said sum is in excess of the amount provided to be advanced for ship construction purposes, namely, $16,155,648, and

Whereas the Groton Iron Works has notified the Fleet Corporation that it is unable to secure the funds necessary to meet the pay roll and ship-construction costs as provided for in said contract, and

Whereas it is necessary to provide for the payment of labor costs to prevent tying up the work of construction; be it

Resolved that the district manager for the North Atlantic district of the Emergency Fleet Corporation be, and he is hereby, authorized to disburse the necessary funds to meet the pay roll due April 24, 1920; and further

Resolved that the payment of this pay roll be made through a representative of the Fleet Corporation to be determined by the said district manager; and further

Resolved that a copy of this resolution be sent to the general
431 comptroller in order that he may issue instructions to the district comptroller of the North Atlantic district for the disbursement of these funds; and further

Resolved that all questions arising in connection with the administration of the Groton Iron Works contract be referred to the district manager of the North Atlantic district for adjustment or recommendation.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the executive committee of the board of trustees of the United States Shipping Board Emergency Fleet Corporation at a meeting on April 23, 1920.

J. P. JAMES,
Acting Assistant Secretary.

COMPLAINANT'S EXHIBIT 21

Resolution—Fleet Corporation

Whereas the Groton Iron Works has notified the Fleet Corporation that it is unable to finance the completion of the three vessels remaining to be constructed under contract 225 S. C., as provided for in the contract of March 26, 1920, thus committing a default under said contract of March 26, 1920; and

Whereas the board considers it to the advantage of the Fleet Corporation to apply for the reinstatement of the receivership over the assets of the Groton Iron Works; Now, therefore, be it

Resolved that the Emergency Fleet Corporation be authorized to make proper application for the reinstatement of the receivership over the assets of the Groton Iron Works, with Frederick Conlin and P. Leroy Harwood as receivers; and further

432 Resolved that the Fleet Corporation be and is hereby authorized to enter into negotiations with the said receivers for the completion of the vessels under the properly pertinent terms of the contract of March 26, 1920, now in force; and further

Resolved that the Fleet Corporation be and is hereby authorized to pay actual cost of said construction, all such expenditure of Fleet Corporation funds to be charged against the proper contract between the Fleet Corporation and the Groton Iron Works; and further

Resolved that in the event it becomes necessary in the consummation of this transaction that the $250,000 paid to the Groton Iron Works and turned over to said receivers for the payment to creditors, be applied for that purpose, but in that event the Fleet Corporation shall withhold transferring title to the wooden steamer awarded as part of the award for cancellation damages under contract 15 W. H., and the supplement thereto; and further

Resolved that the wooden hull and bill of material for the completion thereof awarded under the said contract of March 26 be turned over to the receivers for such disposal as they see fit for the purpose of providing working capital; and further

Resolved that, in the event the funds derived from the disposal of said hull and bill of material are not sufficient to provide working capital, the Fleet Corporation is hereby authorized to institute a revolving fund to the amount of $100,000, to be administered similar to the fund in existence prior to the agreement of March 26th, or in such other manner as may be deemed advisable by the general comptroller; and further

433 Resolved that all questions arising in connection with the execution of this resolution and administration of any agreements arising here out of be referred to the district manager of the North Atlantic district for adjustment or recommendation.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the executive committee of the board of trustees of the United States Shipping Board Emergency Fleet Corporation at a meeting on April 23, 1920.

J. P. JAMES,
Acting Assistant Secretary.

COMPLAINANT'S EXHIBIT 22

Memorandum—Fleet Corporation—In re proposed contract with Groton Iron Works, as prepared under date of March 26, 1920

Meeting was attended by Messrs. Frick, Sullivan, Weaver, Abadie, Adamson, Eason, Nottingham, and Dean.

Proposed contract with Groton Iron Works was discussed. The following conclusions were arrived at:

1. The principal consideration is the completion of the three boats now under construction at the minimum cost. In the opinion of the conference the payment at this time of the $250,000 to be applied to claims of other creditors will not lessen this cost. It does not appear to the conference that any adequate consideration is furnished for the payment of this sum.

2. The conference is of the opinion that Mr. Frick should
434 proceed at the earliest possible moment to Groton and take up with the receivers the reduction of overhead expenses and obtain a statement in writing from the receivers covering estimates to complete the work on the three ships now under construction.

3. The conference is of the opinion that the contract of this date should not be entered into.

R. A. DEAN.
E. H. ABADIE.
E. M. WEAVER.

Copy of memorandum submitted by committee to board of trustees, March 30, 1920.

COMPLAINANT'S EXHIBIT 23

Three public purchase vouchers of Shipping Board referring to purchase of 50,000 shares of capital stock of Fleet Corporation for $100 per share.

This exhibit is submitted in full in volume of physical exhibits at page 84.

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COMPLAINANT'S EXHIBIT 24

Groton Iron Works—Financial statement of expenditures on contracts 57 S. C. and 225 S. C. as of April 28, 1920

	Contracts		
	57 S. C.	225 S. C.	Total amount
Contract 57 S. C., contract payments	$8, 184, 000. 00	----------	$8, 184, 000. 00
Undistributed advances, pay rolls, and material	1, 856, 224. 72	$2, 825, 230. 61	4, 681, 455. 33
Steel furnished by Emergency Fleet Corp	224, 329. 03	907, 115. 71	1, 131, 444. 74
Mill equipment by Emergency Fleet Corp	670, 712. 36	636, 294. 28	1, 307, 006. 64
Insurance by Emergency Fleet Corporation	100, 749. 20	44, 908. 50	145, 657. 70
Excess costs advance	20, 931. 93	817. 29	21, 749. 22
Wage adjustment:			
Overtime bonus	1, 959. 38	----------	1, 959. 38
Increased labor costs	396, 891. 90	----------	396, 891. 90
Retroactive wages	2, 935. 58	460. 79	3, 396. 37

		Contracts 57 S. C.	225 S. C.	Total amount
Undistributed advances, April, 1920:				
Supplementary agreement payment	$250,000.00			
Pay roll adv	101,606.10			
April, 1920, advances, total				$351,606.10
Total to April 19, 1920		$11,458,734.10	$4,414,827.18	$16,225,167.38
Pay roll, April 24, 1920				48,424.66
Power				4,400.00
Paid to date, April 28, 1920				$16,277,992.04
436 Charges not entered:				
Ship payments under revolving fund	$50,000.00			
Interest on above	2,819.18			
Interest on mortgage	170,000.00			222,819.18
Noank overpayment				525,094.19
Receiver's commitments				300,000.00
				$17,325,905.41
Estimated to complete				700,000.00
Credits:				
Contract				$16,155,648.00
Surplus material estimated				600,000.00
Cancellation credit				500,000.00
Total credits				$17,255,648.00

437 COMPLAINANT'S EXHIBIT 25

Contract dated December 20, 1919, between United States Steamship Company and United States Shipping Board Emergency Fleet Corporation, in which the parties are described as follows: "Agreement made this 20 day of December, 1919, between United States Steamship Company, a corporation organized and existing under the laws of the States of New York and having its principal office and place of business in the city of New York (hereinafter referred to as the steamship company), party of the first party, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized and existing under the laws of the District of Columbia, representing and acting in respect to all matters hereinafter con-

tained for and on behalf of the United States of America (hereinafter referred to as the Fleet Corporation), party of the second part."

This exhibit is submitted in full in volume of physical exhibits at page 87.

COMPLAINANT'S EXHIBIT 26

Commissioner Scott's letter

MARCH 16, 1920.

Mr. ARTHUR M. MARSH,
New London, Connecticut.

Groton Iron Works

MY DEAR MR. MARSH: Upon conference with Messrs. C. W. and E. A. Morse, we understand that the Groton Iron Works will propose to its creditors the lifting of the present Connecticut receivership on the following terms:

438 1. They control approximately $1,250,000 of the claims of their creditors presented to the receivers, and these claims they will cancel or cause to be cancelled.

2. The Groton Iron Works will, on behalf of itself and of the above-mentioned creditors, pay or cause to be paid through Frederick Conlin, as receiver, to the remaining creditors whose claims have been duly presented and allowed, twenty per cent thereof in cash and will execute and deliver to said creditors notes of the Groton Iron Works endorsed by the United States Steamship Company for the balance, the same being payable at six and twelve months, respectfully.

3. The Groton Iron Works will execute and deliver to a suitable trustee a mortgage upon its shipyard at Groton, Connecticut, the buildings, equipment, and all property thereon to secure the due payment of said notes, said mortgage to be subject to the mortgage now held by the Fleet Corporation.

4. Messrs. C. W. and E. A. Morse will cause to be delivered to a person or corporation satisfactory to the Fleet Corporation certificates of stock of the Groton Iron Works amounting to more than a majority and including all shares within their ownership or control, together with suitable endorsement or proxies to the Emergency Fleet Corporation or its nominee, so as to enable the Fleet Corporation to vote said shares for all purposes until the completion and delivery of the last of the three ships now buliding at that yard.

5. All claims against the Emergency Fleet Corporation for cancellation of three steel vessels and all other claims of every kind and

nature of the Groton iron Works or the receivers against the
439 Emergency Fleet Corporation shall be compromised and settled for the sum of $500,000.00 plus such additional sum, if any, as the Fleet Corporation may award in satisfaction of the claims arising out of contract 15 WH at the Noank yard, so that no obligation of the Fleet Coropration to the Groton Iron Works or its receivers shall remain except as hereinafter expressly stated, the aforesaid payment to be made by a credit upon the two mortgages of the Groton Iron Works to the Fleet Corporation as appears of record amounting originally to $1,800,000.00

6. The Fleet Corporation will complete the three steel vessels now under construction at said yard in such manner pursuant to the contract therefor as it may deem expedient, but presumably through the present organization at said yard and under the supervision of the said Frederick Conlen, by providing him with the necessary funds for pay roll, and construction account as at present, but upon the understanding that the furnishing of funds in that manner and for those purposes shall constitute the full discharge of the Fleet Corporation to the Groton Iron Works and its receivers of all obligations upon the two contracts for the construction of steel ships. It is understood that payment by the Fleet Corporation for the said steel ships under the two said contracts is based upon $199.16 per dead-weight ton for hulls Nos. 1 to 6, inclusive, and upon $200.00 per dead-weight ton for hulls Nos. 7 to 9, inclusive, and these prices to include all compensation due to the Groton Iron Works on account of construction of all foregoing vessels. The difference between actual cost and the above prices to become available to the said Iron Works, it being agreed that such difference shall not be in excess of the sum of $550,000.00.

440 7. Wherever the Fleet Corporation is named in this memorandum, it is understood to include also the United States of America.

8. Settlement between the Fleet Corporation and all interests owned or controlled by Messrs. C. W. and E. A. Morse and their associates, either personally or through corporate organizations, with reference to the purchase of the said vessels constructed at the said yard is to be made as of March 12, 1920, upon the following basis:

The contract for the sale of these vessels is hereby rescinded; and the United States Transport Company agrees to pay for the use of the same at the rate of $4.15 per dead-weight ton per month up to the date of the completion of their present voyage, with an allowance not in excess of $50,000.00 to apply on the charter hire accrued up to and including March 12, 1920, this allowance having been made in view of the fact that the Transport Company has carried insurance on the said vessels and has paid the cost of repairs thereon.

9. You are authorized to state to the parties in interest and to the uperior Court in Connecticut that settlement upon the above terms is tisfactory to the Fleet Corporation and that we trust it will meet ith the approval of that court. After careful examination of all e circumstances and prospects regarding the future of this ship- ard, we believe that the above proposition is a favorable one and tter than any other that is likely to be presented.

Very truly yours,

T. A. SCOTT, *Commissioner.*

TAS:MC.

1

COMPLAINANT'S EXHIBIT 27

Resolution—Fleet Corporation

Where as the United States Shipping Board Emergency Fleet orporation entered into an agreement with the United States eamship Company on December 20, 1919, providing for the lifting the receivership over the Groton Iron Works by the United States eamship Company and a settlement of the claims arising out of ntract 57–SC and 225–SC on a basis of $199.16 per dead-weight n for hulls Nos 1 to 6, inclusive, and $200.00 per dead-weight ton r hulls Nos 7 to 9, inclusive; and

Whereas said contract further provided for the adjustment of the ims arising out of the cancellation of hulls Nos 10 to 12, inclusive, a basis of $500,000.00 and

Whereas the contract further provided that the claims arising out contract 15–WH be submitted to the president of the Emergency eet Corporation for final determination; and

Whereas the United States Steamship Company has been unable to t the receivership over Groton and has requested that the United ates Shipping Board Emergency Fleet Corporation aid in the ting of the receivership; and

Whereas the receivers have requested the court to order the sale of property and have further requested that they retain their rights reject certain claims against the Emergency Fleet Corporation;

Whereas the board of trustees deems it necessary to take action to serve its security and to secure the settlement of all claims arising out of the foregoing contracts:

Resolved that the agreement of December 20, 1919, be modified to the following extent:

That the United States Shipping Board Emergency Fleet Corpoion advance the sum of $250,000.00 to the Groton Iron Works, said n to be charged against ship construction and to be paid immedi-

ately by the Groton Iron Works to the receivers for the purpose of making twenty per cent payment on the unsecured claims against the receivers' estate; further

Resolved that the claims arising out of the cancellation of hulls Nos 6, 7, and 8 under contract 15–WH be settled by the award of one Ferris-type hull and one bill of material No. 500 for the completion thereof; and further

Resolved that the board hereby approves the contract covering this settlement as submitted.

I hereby certify that the above is a true and correct copy of a resolution passed by the members of the board of trustees of the United States Shipping Board Emergency Fleet Corporation at a meeting held on March 12, 1920.

[SEAL.]

J. P. JAMES,
Acting Assistant Secretary.

443 COMPLAINANT'S EXHIBIT 28

Resolution—Trustees, Fleet Corporation, April 2, 1920

Whereas the Groton Iron Works, a corporation located at Groton, Conn., has been in the hands of receivers appointed by the courts of the State of Connecticut; and

Whereas arrangements have been made for the lifting of said receivership by and between said Groton Iron Works and the United States Shipping Board Emergency Fleet Corporation and other parties, which arrangements include the surrendering of certain certificates of indebtedness of said receivers held by the Emergency Fleet Corporation, the execution and delivery of certain contracts, extension of mortgages, and other documents by and between the Emergency Fleet Corporation and other parties, and the payment on account of ship construction at said Groton Iron Works of $250,000: Now, therefore, be it

Resolved that Arthur M. Marsh, of Bridgeport, Conn., attorney for the Emergency Fleet Corporation and for the United States Shipping Board in these proceedings, be, and he hereby is, instructed, authorized, and empowered to carry into full effect the above transactions in such manner and form as he may deem expedient and for the best interests of the Emergency Fleet Corporation and the United States Shipping Board, and that he make delivery of said payment of $250,000 and of the said receiver's certificates and of all contracts, extension of mortgages, and other instruments to such persons and in such form and at such time as he may deem expedient, receiving therefor cash or checks or written obligations of Charles W. Morse

and William Guggenheim or other obligations or security in
444 such form and amount and upon such terms as he may deem best suited to carry said transaction into effect; and further

Resolved that every officer and employee under the jurisdiction of the United States Shipping Board and of the trustees of the Emergency Fleet Corporation, be and he is hereby, authorized and instructed to cooperate with the said Arthur M. Marsh in the execution of this order and in every respect to comply with whatever request may be made of them or any of them by him, any rule or practice to the contrary herewith notwithstanding.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted at a meeting of the trustees of the Emergency Fleet Corporation held on April 2, 1920.

[SEAL.]

J. P. JAMES,
Acting Assistant Secretary.

COMPLAINANT'S EXHIBIT 29

Adamson's statement, for Fleet, March 29, 1920, general comptrollers' department

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
March 29, 1920.

From: Special deputy general comptroller.
To: General comptroller.
Subject: Proposed contract with Groton Iron Works as prepared under date of March 26, 1920.

1. A proposed settlement contract between the Emergency
445 Fleet Corporation and the Groton Iron Works is now being considered by Mr. R. A. Dean, general counsel, and Mr. H. H. Weaver, of the construction claims board, who are to make recommendations to the chairman.

2. This memorandum is intended to raise certain questions, which I believe should be considered by Mr. Dean and Mr. Weaver.

3. The proposed contract involves three construction contracts, with the following status as to completion:

Contract No. 15 W. H., dated June 15, 1917, for 12 wooden cargo-carrying hulls, Nos. 125 to 136, inclusive, to be built at the Noank plant at a price of $309,000 per hull;

Three hulls, Nos. 125, 126, and 127, delivered almost 100 per cent complete.

One hull, No. 128, delivered 97 per cent complete.

One hull, No. 129, delivered 90 per cent complete.

Four hulls, Nos. 133, 134, 135, and 136, canceled September 30, 1918, and settlement made.

Three hulls, on which contractor alleged defaulted, with percentage of completion as follows:

No. 130, 28 per cent complete.

No. 131, 20 per cent complete.

No. 132, 12 per cent complete.

Contract No. 57 S. C., dated August 11, 1917, for six steel cargo vessels of 8,800 dead-weight tons to be built at the Groton Plant at a price of $155 per ton. All six ships have been delivered.

Contract No. 225 S. C., dated April 20, 1918, for six steel cargo vessels of 9,400 dead-weight tons to be built at the Groton Plant at a price of $182 per ton:

Three hulls, Nos. 10, 11, and 12, suspended.

Three hulls, Nos. 7, 8, and 9, under construction.

446 Advantages of proposed settlement to contractor

4. The proposed settlement would give the following benefits to the contractor:

(a) The Groton Iron Works would be discharged from the hands of receivers.

(b) An immediate advance of $250,000 from the Emergency Fleet Corporation to pay off 20 per cent of the contractor's outside obligations, notwithstanding the fact that the accounts show large excess payments at the present time.

(c) The payment of $500,000 as a cancellation allowance on the three suspended steel vessels, under contract No. 225, notwithstanding a clear provision of the cancellation clause of the contract which seems to make this allowance very excessive.

(d) The assumption by the Emergency Fleet Corporation of responsibility for suspension of work on the three wooden hulls Nos. 130, 131, and 132, under contract No. 15, and an award as compensation therefor as follows:

(1) One Ferris-type wooden ship to be selected by the contractor from a list of available ships.

(2) One Ferris-type hull to be selected by the contractor.

(3) One bill of material, No. 500.

(4) The three partially completed hulls now on the ways.

(e) An increase from $155 to $199.16 per dead-weight ton in the lump-sum price of the six steel vessels delivered on contract No. 57.

(f) An increase from $182 to $200 per dead-weight ton in the lump-sum price of the three uncanceled steel vessels under contract No. 225.

(g) Obligation by the Emergency Fleet Corporation to take
447 back from the contractor all surplus materials delivered at the plant of the contractor for constructing and outfitting vessels under all three contracts, and charged by the owner to the contractor.

(h) Extension of two mortgages aggregating $1,800,000 held by the Fleet Corporation to March 26, 1921.

No apparent advantages to the Fleet Corporation

5. While the advantages to the contractor are many, there are no obvious advantages to the Fleet Corporation. Instead of improving its position, the Fleet Corporation would be involved immediately to a greater extent than at present and would lose what protection is now afforded by the receivership.

Financial status at completion of proposed contract

6. The financial status at the completion of the proposed contract is indicated roughly as follows:

Charges to contractors on contracts 57 and 225:	
Construction advances to March 1	$15,403,925.65
Additional advances required by contract	751,722.35
Balance of mortgage loans	1,716,666.67
Interest due March 1	171,440.01
Interest, March 1 to July 5	35,744.27
Total required from Emergency Fleet Corporation under proposed contract	18,079,498.95
448 Credits to contractor:	
Value of completed contract No. 57—6 ships totaling 52,800 dead-weight tons at $199.16 per ton	10,515,648.00
Value of completed contract No. 225—3 ships totaling 28,200 dead-weight tons at $200 per ton	5,640,000.00
Allowance for 3 canceled hulls	500,000.00
Total value of completed contracts	16,655,648.00
Due from contractor to Emergency Fleet Corporation at end of contract	1,423,850.95
Add overpayment on contract No. 15	454,413.63
Grand total due from contractor	1,878,264.58
Secured by mortgages	1,716,666.67
Unsecured amount due at end of contract	161,597.91

7. The foregoing does not take into consideration credits to the contractor on account of surplus material that may be taken back by the Fleet Corporation.

8. On the other hand, it does not consider the probability that the Fleet Corporation will have to advance far more than the $751,722.35 in order to complete the contract.

449 Estimated that $1,400,000 will be required to complete the contract

9. It was estimated on March 1, 1920, that $1,400,000 additional would be required to complete the three vessels under construction. This money must come from some source, and there is serious likelihood that it will have to be advanced by the Fleet Corporation.

10. The proposed contract required the Emergency Fleet Corporation to advance on ship construction until the total advances, not counting the mortgage loans, shall reach the sum of $16,155,648, which is the fixed value of contracts Nos. 57 and 225 in the contract. As shown above, this will require a further advance of $751,722.35.

11. Of this sum $250,000 is to be advanced immediately to pay off a 20 per cent of the outside indebtedness. This would leave only $501,722.35 for the work of completion, making it necessary to find approximately $900,000 from some source.

12. If the Groton owners have to come to the Fleet Corporation now to get $250,000 to pay creditors, so that the receivership may be lifted, it is hardly to be expected that they will provide $900,000 to complete construction work on the three ships.

13. Viewed from every angle, it looks as if the Emergency Fleet Corporation will have to provide funds to complete construction whether the proposed contract is made or existing conditions are continued. Therefore the immediate advance of $250,000 to pay Groton creditors would be made to no advantage to the Fleet Corporation, but to its positive disadvantage, in that its recovery from the now bankrupt contractors might be extremely difficult.

450 Contract limitation on cancellation allowance for steel hulls

14. Regarding the proposed allowance of $500,000 for cancellation losses on three steel hulls under contract No. 225, attention is called to article 18 of the original contract No. 225, which places a definite limitation upon the amount allowable for cancellation losses. This article states:

"The contractor shall be reimbursed for losses sustained by such cancellation. In computing such losses there shall be included for each vessel a proportionate part of the estimated profit on a completed vessel. Such proportionate part shall not exceed the percentage which the cost of the vessel under construction bears to the cost of a completed vessel. In computing profit on cost the average actual experience of the contractor on vessels constructed for the owner shall be taken as the basis of the computation."

15. The contract declared specifically that no profit would be allowed on vessels not under construction.

Keels never laid for three canceled steel hulls

16. Inasmuch as keels were never laid for the three canceled steel hulls, and as practically no work was done by the contractor except to draw plans, it is difficult to justify the cancellation allowance in the light of the contract provisions quoted above. The Fleet Corporation furnished 2,883 tons of steel for the three vessels. Notwithstanding the fact that actual erection was not started, the Groton Co. presented heavy claims. The claims and the item allowances on which the $500,000 cancellation allowance was based as follows:

	Claimed by Groton	Allowed in $500,000 allowances
1. Profit at 10 per cent of $1,237,862	$123,786.20	$31,747.00
2. Write off on plant	325,000.00	325,000.00
3. Freight on incoming material	19,792.00	19,792.00
4. Cost of design	25,000.00	25,000.00
5. Increased burden	30,000.00	30,000.00
6. Cancellation of commitments	758,402.00	
7. Loss of efficiency	389,250.00	
Total		$431,539.00

17. An additional allowance of $36,128 on labor and overhead on canceled vessels helped to bring the allowance up to $467,667. Mr. Nottingham states that in negotiations the flat sum of $500,000 was agreed upon.

Award largely amortization

18. The figures supplies by Mr. Nottingham show that the award of $500,000 is made up principally of an item of $325,000 for plant write off. The original contract, in dealing with the contractor's plant and facilities, leaves little opportunity for a claim for amortization. Article 17 says:

"As an inducement to the owner to enter into this agreement, the contractor represents that the site for its shipbuilding plant at Groton, Conn., is suitable in all respects * * * Contractor further represents that there now exists or will be provided by the contractor ample facilities for the transportation of material and employees to contractor's yard as well as housing facilities for such employees. The contractor agrees that in the event it becomes necessary to provide for or to supplement any of the matters herein mentioned it will be done by the contractor free of expense to the owner."

19. Under present conditions the three steel hulls under construction should be completed in about four months. If, after that time, it should become necessary or advisable to foreclose on its mortgages, it would have a property valued at $2,000,000. The value would be no greater if it should be necessary to foreclose after entering into the proposed new contract.

Objections to proposed contract

20. The Morse interests have been actively endeavoring for several months to secure a new contract and lift the receivership. Their efforts were opposed by Emergency Fleet Corporation representatives in the construction division.

21. Mr. J. J. Eason, formerly Fleet representative at the Groton plant, prepared a letter under date of October 21, 1919, for the signature of Mr. J. L. Ackerson, then vice president of the Emergency Fleet Corporation. This letter, signed by Mr. Eason, expressed emphatic disapproval, part of which is quoted as follows:

"We can not see where the best interests of the Government would be served by entering into a new agreement with the Groton Co. * * *.

453 "In view of the foregoing and the fact that the present management of the Groton Iron Works is efficient and satisfactory to the Emergency Fleet Corporation, as well as to the majority of the creditors, we strongly object to making any change in the management or entering into a new contract agreement at this yard.

"If the owners wish to secure control and operate the yard, they should at least pay off the creditors and remove the receivership without further financial assistance from the Emergency Fleet Corporation and carry out their contractual obligations in accordance with the terms set forth in contracts.

"Otherwise, we recommend that the present management be maintained at this yard until the vessels or contracts with the Emergency Fleet Corporation have been completed."

New contract executed December 20, 1919

22. A new contract was executed by the chairman, John Barton Payne, and the Groton Iron Works under date of December 20, 1919. This contract provided that the contractor would raise funds to lift the receivership, that the Fleet Corporation would pay $500,000 as a cancellation allowance on the three suspended steel hulls under contract 225, increase the lump-sum price on the three remain-

essels under that contract of $200 per ton, and increase the
on the six delivered vessels under contract 57 S. C. to $199.16
on.

This contract is presumably in force, but without effect, as
Morse interests did not provide funds to lift the receiver-
ship.

24. The Morse interests petitioned the Connecticut courts
for a discharge of the receivership, but that action is de-
ent upon the execution by the Emergency Fleet Corporation of
tract advancing funds to pay off $250,000 of obligations.

The December 20 contract specifically left unsettled the claims
lleged cancellation of the three wooden hulls under contract
15, and provided that any claims arising from that contract
d be submitted to the president of the Emergency Fleet Cor-
ion, whose award would be final.

lowance for wooden hulls not considered by board of trustees

On March 12, 1920, Mr. Nottingham, of the law division, ap-
d before the board and read a memorandum recommending
inite settlement of pending claims. He stated:

The estimated amount payable to the Groton Iron Works over
above the cost of construction is $800,000, $500,000 thereof being
ancellation fee arising out of the cancellation of hulls Nos. 10,
nd 12, the balance, namely $300,000, being the profit on the
ruction work."

Mr. Nottingham recommended that $250,000 of this amount
aid into court to pay off 20 per cent of the outside creditors, that
ssets be returned to the company, but that Frederick Conlin,
f the receivers, should be continued as receiver for the sole pur-
of carrying out the arrangements and making disbursements
editors. Mr. Nottingham said:

This arrangement will definitely settle all claims against the
Fleet Corporation."

28. The board of trustees resolved that the Fleet Corpora-
tion join in the proposal of the Groton Iron Works on the
proposed by Mr. Nottingham. On March 13, the matter of
ellation of the three wood ships was referred to Mr. Scott with
ority to settle on the basis of giving one wooden ship and one
len hull as an allowance.

Inasmuch as the construction division has claimed that the
actor was at fault regarding the three wooden hulls, and as the
d may not have had this fact before it for consideration, it is
ested that any claim on account of the wooden hulls should be

passed upon with regard to the claim of the construction division that the contractor was at fault.

Large award already made on four canceled wooden hulls

30. On September 30, 1918, the Fleet Corporation made an adjustment contract covering wooden hulls Nos. 133, 134, 135, and 136, which definitely canceled these hulls and awarded as compensation an increase in price on the eight remaining hulls aggregating $1,000,000 made up as follows:

Hulls 125 and 126, already completed, an increase from $300,000 to $450,000 per hull.

Hulls 127 and 128, under construction, an increase from $300,000 to $450,000 per hull.

Hulls 129, 130, 131, and 132, an increase from $300,000 to $400,000 per hull.

31. The contractor has been credited with the full $450,000 price on hulls 125, 126, and 127, but as hull 128 was only 97 per cent complete and hull 129 only 90 per cent complete when delivered, the credit should be only $436,500 and $360,000, respectively.

456 Overpayments to contractors

32. A statement from the district comptroller of the northern Atlantic district shows large overpayments to the contractor on account of the three contracts. The statement on contract 15 is as of January 30, and the statement on contracts 57 and 225 combined is as of March 1, 1920.

33. A summary of the statements is as follows:

Contract No. 15, Noank plant:		
Total charges to contractor	$3, 690, 398. 80	
Total credits to contractor	3, 2[illegible]5. 17	
Excess		$454, 413. 63
Contracts Nos. 57 and 225, Groton plant:		
Total advances to contractor	$17, 120, 592. 32	
Estimated value of contracts	14, 758, 476. 88	
Excess	2, 362, 115. 44	
Add interest not charged	170, 000. 00	
Excess, including interest	2, 532, 115. 44	
Deduct mortgages	1, 716, 666. 67	
Net excess		815, 448. 77
Total excess for 3 contracts		1, 269, 862. 40

Allowing certain contingent credits, this large overpayment is reduced by the following:

Contingent credits—		
Labor reimbursement	$100,000.00	
Items in transit	77,530.00	
Freight excess	26,400.00	
Steel excess, hulls 7, 8, and 9	70,000.00	
Deduct total contingent credits		$273,930.00
Excess after allowing contingent credits		$995,932.40

457 More overpayment under proposed contract

34. The proposed contract would affect the situation as follows:

Apparent overpayment as shown above	$995,932.40
Deduct cancellation allowance on steel ships	500,000.00
Total	$495,932.40
Add advance called for by contract	250,000.00
Estimated overpayments at beginning of new contract	745,932.40

TILDEN ADAMSON,
Special Deputy General Comptroller.

COMPLAINANT'S EXHIBIT 30

Estimate of cost of completion Contract No. 57 S. C.

SEPTEMBER 15, 1919.

(Book figures up to August 30, 1919, used for direct labor and overhead)

Hull No.	Material (estimated)	Direct labor	Overhead	Total	Cost per d. w. ton (based on 8800)
1	$660,920.40	$866,024.22	$638,995.90	$2,165,940.52	$245.00
2	662,020.40	760,871.95	470,966.03	1,893,758.38	216.00
3	660,920.40	737,595.88	492,897.75	1,891,414.03	215.00
4	664,020.40	523,158.36	295,061.96	1,482,240.71	169.00
5	663,420.40	625,380.91	356,494.98	1,645,296.30	187.00
6	664,020.40	445,394.43	256,623.51	1,365,928.34	156.00
	$3,975,322.40	$3,958,315.75	$2,511,470.12	$10,445,108.27	$198.20

458 *Money to be received*

Contract price, six ships	$8,184,000.00
Bonus overtime	110,430.10
Liability insurance	45,000.00
Extra guard force	13,262.01
Fire Marshall	2,188.05
15 min. payoff period	13,000.00
Excess freight charges	26,400.00
Cost training school	2,068.00
Excess dead weight (100 tons)	93,000.00
Extra lighting	800.00
Excess labor claims	1,584,000.00
Night bonus $75 per week, Oct., 1918 (50 weeks)	3,750.00
Changes and extras	420,203.90
Increase in piece-work rates	50,000.00
Total	$10,546,122.06
Less omission, military requirements	30,000.00
Grand total	$10,516,122.06
	10,445,108.22
Margin	$71,013.84

459 **Complainant's Exhibit 30–1**

Estimate of cost of completion contract No. 225 S. C., September 15, 1919

Contract price @ $182 per d. w. t. per ship	$1,710,800.00
Extras:	
Macy increase @ $10 per d. w. t. per ship	94,000.00
Changes and extras @ $4.80 per d. w. t. per ship	45,100.00
Excess freight @ 50c. per d. w. t. per ship	4,700.00
Liability insurance @ 35c. per d. w. t. per ship	3,290.00
15 min. pay-off period @ 15c. per d. w. t. per ship	1,410.00
Expected increase in wages, Oct. 1, 1919 (10%)	70,000.00
Total price per ship	1,929,300.00

Equals $206 per d. w. t.

COST ON BASIS OF THREE SHIPS ONLY

Direct labor $70 per d. w. t. per ship	$658,000.00
Overhead $35 per d. w. t. per ship	329,000.00
Material $75 per d. w. t. per ship	705,000.00
Total cost per ship	1,698,000.00

Equals $1.80 per d. w. t. Margin for three ships, $731,200.00

COST ON BASIS OF THREE SHIPS ONLY

Judging by figures arrived at from the estimate of cost to complete vessels under contract No. 57 S. C. and allowing for an anticipated increase of 10% in direct labor October 1, 1919, it

400 is thought that with six of these vessels to build, the first three can be built at a cost of $172 per d. w. t.

Margin for first three ships ($84×3×9,400)	$958,800.00
Total margin for six ships:	
First three ships	958,800.00
Second three ships (higher because of loss of efficiency due to construction program coming to an end)	731,200.00
	1,690,000.00

COMPLAINANT'S EXHIBIT 31

Form E.—Contract, Emergency Fleet Corporation

The first paragraph is as follows:

"Contract made this day of 191 , between a corporation organized under the laws of the State of , party of the first part (herein called the contractor), and United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, party of the second part (herein called the owner)."

A portion of the last paragraph is as follows:

"In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated, in triplicate.

"UNITED STATES SHIPPING BOARD
"EMERGENCY FLEET CORPORATION,

"[SEAL.] By , *President.*

"Attest:

"Secretary."

This exhibit is submitted in full in volume of physical exhibits at page 100.

401 COMPLAINANT'S EXHIBIT 32

Hearings before select committee on U. S. Shipping Board (1919–1920), p. 1181. Sixty-sixth Congress, second session

The CHAIRMAN. Are you familiar with the situation with reference to the claims of the Morse interests on account of the Groton Iron Works against the Fleet Corporation?

Mr. DEAN. Only to this extent: Last month, after Admiral Benson came to the Shipping Board, a contract was sent down to my office, and I was asked to review this contract and advise him whether or not the board ought to accept it, or to pass it, or execute it. Do you wish me to continue about that contract?

The CHAIRMAN. I did not catch the last part of your answer.

Mr. DEAN. You see it is rather a limited knowledge that I have.

The CHAIRMAN. The contract was sent down to you for approval of what, relating to what?

Mr. DEAN. To a discharge of the receivership.

The CHAIRMAN. Did you approve it?

Mr. DEAN. No; I disapproved that particular contract.

The CHAIRMAN. What, briefly, did the contract provide?

Mr. DEAN. The contract provided for a new price for certain ships that were under construction; as I remember it, 9,400-ton ships at about $200 a ton, and I considered that price all right; and 8,800-ton ships at a little less price, and I had no objection to that phase of the contract. There was a certain cancellation allowance there, and I was not satisfied with that cancellation al-

462 lowance. I might say that my procedure in this case was, as it is in many others, to reach out and get someone to advise me on those things. So I held a conference in my office on March 30, 1920, which was attended by Mr. Frick, the head of the construction division in Philadelphia; by Mr. Weaver, a member of the construction claims board—and if I may be allowed to digress for a moment I would say that the construction claims board primarily passed upon all these canceled cases, which had to go through that board and they had to recommend settlement—and as I have said, Mr. Weaver of that board was present; Col. Abadie, who was the general comptroller; Mr. Adamson, who is here this morning and is deputy general comptroller in charge of fleet finances; Mr. Eason, whose exact position I think Capt. Nottingham has told you about, or about his present position, and he was a man who knew a good deal about the financing of the Groton plant; Capt. Nottingham, who has just been on the stand; and Mr. Sullivan, and I do not know his position.

We took up this contract and went over it. The feature of the contract which I had a good deal of difficulty with was this: There was a provision in the proposed contract providing that a quarter of a million of dollars was to be advanced to be applied to claims of other creditors, and my difficulty was that advance of an extra quarter of a million of dollars presented the problem, was it justified? It was to take care of claims of other creditors. I did not feel satisfied that we were getting adequate consideration for that

additional advance at this time. It was really upon that point that my objection rested. Mr. Weaver, who has had long experience in those matters and a member of this construction claims
468 board, and whose opinion would have a good deal of weight with me, agreed with me at that time. On the strength of that I prepared this little memorandum I find in my diary file, in which I stated that I had held this conference and that the proposed contract with the Groton Iron Works was discussed. This memorandum is as follows:

(Memorandum printed in full as Exhibit 22.)

The same day I appeared before the board of trustees and read this little summary and we had some little discussion of the contract. (Pp. 1182–1183.)

Mr. DEAN. Then the Groton Iron Works was to go in and complete the ships.

The CHAIRMAN. Have they done that?

Mr. DEAN. As a matter of fact they have not.

The CHAIRMAN. They have not done it?

Mr. DEAN. They have gone in and taken hold of the matter and made certain changes in personnel—I was advised of this on yesterday. But they are in default. There were certain things they were to do. They were to make certain payments. They were to furnish money for things that were necessary; they were to finance the completion of those ships, or do a large part of it. The matter came to a head on yesterday, when it came to our attention as we were advised that they were in default and unable to meet their pay roll to-day, and the matter was called to the attention of the board, and we have now practically cancelled the contract of March 26 and are proceeding to ask for the reinstatement of the two receivers and propose to go on with the work. I might also add that we have taken steps to stop the payment of the $250,000 to the other creditors, and the money is still where we can hold it.

464 In United States District Court

Defendant's exceptions to report of master as to fourth separate defense

Comes now the defendant, by John Buckley, Esquire, United States attorney for the district of Connecticut, its solicitor, and Henry F. Parmelee, Esquire, special assistant to the Attorney General, of counsel, having heretofore excepted to the draft report of the special master dated August 3, 1926, and having on September 20, 1926, argued such exception before the special master, who subsequently, on October 4th, filed his report of that date overruling

defendant's said exceptions, and not varying his findings and conclusions in response to said exceptions, and this defendant now asserts the same exception to the report of the special master, filed October 4th, 1926, as follows:

This defendant excepts generally to the said report of the special master in so far as the said report finds and concludes that the fourth separate defense is not established and that as proved is insufficent in law to constitute a complete defense to the cause set forth in the bill of complaint and excepts thereto more specifically as hereinafter set forth.

1. The defendant excepts to paragraph II (a) of the conclusion reached by the master "that the defendant has not sustained the burden of proof on the issues raised by the fourth separate defense, so-called," and for causes of exception shows—

The defendant has shown by sufficient evidence which is uncontroverted—

(a) The President, pursuant to the emergency shipping
465 fund provisions of the emergency shipping act of June 15th, 1917, whereby the President was authorized to requisition materials and build ships, among other powers, and was authorized to exercise such powers and authority through such agencies as he might determine, delegated such authority (including rights to modify and cancel contracts) by successive Executive orders, dated July 11th, 1917, June 18th, 1918, and December 3rd, 1918, to the defendant. (See transcript page 40 of vol. 1 and page 9 of vol. 2 and a pamphlet published in 1920 by the United States Shipping Board and entitled "The Shipping Act and Merchant Marine Act.")

(b) That Congress was informed on June 13th, 1917, that if the act of June 15th, 1917, was passed the President's powers thereunder to build ships would be delegated to the defendant. (See complainant's Exhibit 13.)

(c) That the contract (Exhibit E) executed June 15th, 1917, and the succeeding contracts were for the building of ships for the Government and were entered into by the defendant because of the said statute.

(d) That the Groton Iron Works understood and described the work undertaken, and an additional contract sought, to be Government work and contracts. (See defendant's Exhibit P.)

(e) That on June 15th, 1917, the entire resources of the defendant consisted of the Government's payments and subscription on account of its capital stock of $50,000,000 and its commitments on that date exceeded $76,000,000. (See transcript, Finninger, pages 28, 29, 45, 50–63.)

(f) That the contracts amendatory to the contract of June 15th, 1917, expressly stated that the defendant was representing the
466 United States and were executed and accepted by Groton Iron Works. (See defendant's Exhibits 2, 3, 4, and 5.)

(g) That all payments made under the contracts were of moneys of the United States appropriated for the purposes of shipbuilding and shipping pursuant to the emergency shipping act of June 15th, 1917, and were not of moneys constituting capital, surplus, earnings, income, or borrowings of the defendant, or moneys of the defendant in its capacity of a private corporation. (See transcript, Finninger, vol. 3, pages 28–30, 45–66; vol. 4, pages 44–49.)

(h) That the ships built under the contracts were built for the United States and not for the defendant, whose sole function with respect thereto was to secure the production of the ships and deliver them to the Government without profit or consideration to itself. (See transcript, Finninger, vol. 4, pages 49–52.)

(i) That the United States was the real party in interest.

2. The defendant excepts to Paragraph II (b) of the conclusion reached by the master, and for cause of exception shows that the matters stated in paragraph 1 of these exceptions were proved by conclusive evidence not controverted.

3. The defendant excepts to Paragraph II (c) of the conclusions reached by the master for the reason that the issues raised by the fourth separate defense, to wit, (a) that the defendant was acting as an agency of the United States, selected by the President under the powers conferred upon him by the act of June 15th, 1917, and (b) that the United States is the real party in interest, have been affirmatively proved.

4. The defendant, without admitting that the Fleet Cor-
467 poration performed any act or entered into any contract in its capacity as a private corporation relative to its own business or property, excepts generally to the master's reasons for his conclusions entitled in said report "II, As to the Fourth Separate Defense," for the reason that the report fails to distinguish acts and contracts of the defendant in the operation of ships or otherwise, where the acts and contracts of the defendant were in its capacity of a private corporation, relating to its own business or property, and acts and contracts by the defendant, not related to its own business or property, but performed and entered into only with the provisions of the emergency shipping act authorizing the President to build ships and a delegation of such authority to the defendant, whereby the defendant, having no option but to obey, assumed no personal liability but was as free therefrom as the President would

have been had he elected to personally exercise the authority and powers granted.

5. The defendant excepts specifically to the first paragraph of Part II, "As to the fourth separate defense," wherein it is stated that the Fleet Corporation was organized like any other corporation under the laws of the District of Columbia, and respectfully requests the master to amend and amplify the paragraph by stating the material fact that said Fleet Corporation was organized by the United States Shipping Board pursuant to the authority contained in section 11 of the shipping act of 1916 and that all of its capital stock was issued to the United States and, except for qualifying directors' shares, held by the United States, and that its board of di-
468 rectors consisted at all times of the identical persons who were from time to time commissioners of the United States Shipping Board.

6. The defendant specifically excepts to the statement that "the defendant does not seriously deny but that under the 'shipping act of 1916' the Fleet Corporation would be liable individually upon a contract made by it" and for cause of exception shows (without admitting) that although the defendant might be liable for breach of a contract made by it not in behalf of the United States, the defendant claims that it is not liable on contracts or for acts, as a governmental agency, in behalf of the United States.

7. The defendant specifically excepts to the statement that "it (the defendant) claims however that the act of June 15, 1917, changes this situation by its provisions, relative to the delegation of powers by the President to the Fleet Corporation," and for cause of exception shows that the delegation of the President's powers under the statute to the Fleet Corporation conclusively shows that the exercise of such powers by the Fleet Corporation was for and in behalf of the United States as their agent or instrumentality, for which the United States are alone liable.

8. The defendant specifically excepts to the statement that "the President of the United States did delegate to the Fleet Corporation certain extraordinary powers, such as requisitioning materials and commandeering plants," and for cause of exception shows that the Executive order of 11 July, 1917, states:

"By virtue of authority vested in me in the section entitled 'Emergency Shipping Fund' of an act of Congress entitled
469 'An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,' approved June 15, 1917, I hereby direct that the United States Shipping Board

Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction."

9. The defendant specifically excepts to the statement that "these powers (delegated by the President) if exercised, would, however, be on a different basis than those of making contracts," and for cause of exception shows that the Executive order delegating powers specifically provides that the "Fleet Corporation shall have and exercise all power and authority vested in me (the President) in said section of said act, in so far as applicable to and in furtherance of the construction of vessels * * * or of contracts for the construction of such vessels," and there is therefore no basis for a difference in the capacity in which the Fleet Corporation requisitioned materials and contracted for the construction of ships.

10. The defendant excepts to the said report for failure to
470 find the material facts as hereinbefore set forth in paragraph 1, subparagraphs (a) to (i), inclusive.

Dated October 21st, 1926.

JOHN BUCKLEY,
United States Attorney, Solicitor for Defendant,
HENRY F. PARMELEE,
Special Assistant to the Attorney General,
Of Counsel.

In United States District Court

Exceptions of complainant to report of master as to first separate defense

P. LeRoy Harwood, as trustee in bankruptcy of Groton Iron Works, complainant herein, respectfully excepts to so much of the report dated October 4, 1926, and made herein by Hon. David E. Fitzgerald, special master, appointed pursuant to order dated July 9, 1924, as refers to the first separate defense, interposed by the defendant, in its answer to the bill of complaint herein as follows:

First. To the failure and refusal of the special master to heed and give effect in said final report to complainant's exceptions and supplementary exceptions to the draft report of said special master, which were duly made, submitted, argued, and filed with the special master herein, on the 20th day of September, 1926.

Second. To the finding on page 11 of said report that the
471 claims of the parties, respectively, as set forth by the master in said report, pages 8–10, inclusive, constitute in substance the questions which are actually at issue in respect of said issue raised by the first separate defense so severed by order of the court, became the questions and only questions at issue, in respect of said first separate defense, are those set forth in complainant's exceptions to the draft report, filed herein and reference to which is hereby made.

Third. To the finding on page 12 of said report that the Fleet Corporation did all things necessary to have completed as rapidly as possible the construction of the vessels referred to in the various contracts entered into with Groton, because the proof shows that the Fleet Corporation delayed said construction by failure to make payments therefor as and when agreed, because the Fleet Corporation delayed construction by its arbitrary methods and in other particulars, and because this finding is not material to the issue herein.

Fourth. To the finding on pages 12 and 13 of said report that the terms, conditions, and specifications of the various contracts referred to in the bill of complaint were particularly and specifically based upon the knowledge and experience of those respectively in charge of the affairs of Groton and the Fleet Corporation, and that the said several contracts and all circumstances attending the carrying out of the same or any amendment or supplement thereto were what might be expected to arise under "the then-existing war conditions," because the proof is to the contrary and because the contracts were drawn by the Fleet Corporation and their terms arbitrarily imposed and carried out by the Fleet Corporation.

472 Fifth. To the finding on page 15 of said report that the parties never went forward to carry out the terms of the agreement of December 20, 1919, because Groton was unable to provide the funds to lift receivership, because contrary to the facts proved, and because not material to the issue herein.

Sixth. To the finding on page 16 of said report that Groton's representatives had permission for some time prior to March 26, 1920, to examine the books of Groton but did not do so at any time during which the terms and conditions of Exhibit 5 were under discussion and that no legal excuse has been offered because of the failure so to do, because the contrary is shown by the testimony of witnesses White, Gordon, Morse, and other proof in the case.

Seventh. To the finding on page 17 of said report that the Messrs. Morse, credited with controlling Groton, the United States Steamship Company, the Virginia Shipbuilding Corporation, and other shipyards, the attorneys representing these corporations, as well as these persons individually, the members of, or, at least, some of the

embers of the United States Shipping Board, the representatives nd attorneys of the Fleet Corporation and of the receivers and thers who attended the various conferences held with reference to fting the receivership, each and all discussed the details of the larch 26, 1920, contract (Exhibit 5) prior to and shortly after its xecution by the parties thereto, because contrary to the evidence nd not material on this issue, and because the proof shows that the eceivers did not participate in the conferences and discussions re- rred to, and because the receivers knew nothing of the March 26, 1920, contract and were not consulted as to its execution.

Eighth. To the finding on page 17 of said report that at one of the conferences held at Washington on March 30, 1920, r. Charles Morse declared in substance that with the financial aid hich the Fleet Corporation was to furnish under the contract Exhibit 5) Groton would be able to take care of the rest of the nances necessary for the completion of the vessels referred to, cause this is not established by any competent proof and because l conversations regarding the terms of said contract of March 26, 20, were merged in the written contract, dated March 26, 1920, t not signed by the Fleet Corporation until on or about April 2, 20.

Ninth. To the finding on pages 17 and 18 of said report that ither at the conference held prior to March 26, 1920, nor at any her time was fraud, misrepresentation, deceit, or duress practiced resorted to by either of the parties or their representatives to tain or cause to be obtained the execution of the March 26, 1920, ntract (Exhibit 5), because contrary to all the evidence, and par- ularly because contrary to the undisputed evidence that defendant resented to the creditors by letter (Exhibit 26), and otherwise, an inducement for their consent to lifting the receivership, facts own by the proof to be untrue and facts upon which the creditors ied.

Tenth. To the finding on page 18 of said report that following execution of the March 26, 1920, contract (Exhibit 5) and in mpliance with the terms thereof the Fleet Corporation caused the a of $250,000 to be advanced to the receivers to pay to Groton's ditors, because contrary to the evidence and because the contract March 26, 1920, required payment of $250,000 directly to Groton Iron Works.

Eleventh. To the finding on page 18 of said report that under the contract of March 26, 1920 (Exhibit 5), the Fleet rporation agreed to pay Groton a much larger price for each el than that provided for originally in the various contracts, and t the amount of $16,655,646, exclusive of amounts advanced and

secured by mortgages (and subject to certain modifications provided for in Article IV, paragraph 2, of Exhibit 5) was set as the maximum cost price of the vessels referred to in said contracts (Exhibits 3 and 4), because the original construction contracts required the Fleet Corporation, in addition to the tonnage prices specified, to pay and reimburse Groton Iron Works for all increases in wages ordered by it, for all changes and extras, and for other items, the sum total of which were greatly in excess of the prices arbitrarily fixed by the Fleet Corporation, in the March 26, 1920, contract, and because said finding is in other respects contrary to the proofs.

Twelfth. To the finding on page 19 of said report that the sum of $500,000, agreed upon as an adjustment growing out of the cancellation of certain of the steel vessels, was not to be paid to Groton in cash, because contrary to the terms of the contract (Exhibit 5), properly construed.

Thirteenth. To the finding on page 20 of said report that at this period in the relationship of the parties, the subject of Groton going back into receivership was discussed, and that Groton did not desire another receivership and sought a new financial arrangement with the Fleet Corporation whereby it could obtain the aid necessary to enable it to complete said unfinished vessels, because con-
475 trary to the evidence, which shows, among other things, that Groton Iron Works was not consulted about restoration of the receivership and sought only payment of the consideration due it under the March 26, 1920, contract, which the Fleet Corporation refused immediately following the making of this contract.

Fourteenth. To the finding on page 21 of said report that as a further consideration for the Fleet Corporation's making these advancements (the $1,000,000 loan) to Groton the representative of the former insisted that Groton waive all claims to the wood ship, hull and bill of material to which it was entitled, and that this was agreed to by Mr. Morse acting for Groton and accepted as such by the Fleet Corporation, and thereafter, in part consideration of the above money was in fact advanced to Groton and the three (3) vessels finally completed and delivered to the Fleet Corporation, because there is no competent evidence to sustain this finding and because it is contrary to the terms of the agreement referred to and made on April 29, 1920, a written memorandum of which is in evidence (Exhibit 19), and to the other proof.

Fifteenth. To the finding on page 22 of said report that the Groton officials did not consider the reconciliation of accounts concerning wooden vessels referred to in Article XII, section 2 (Exhibit 5), necessary, and that such reconciliation has therefore been postponed or waived by the joint action of the parties, because contrary

to the evidence and inconsistent with the finding of the master on page 24 of said report, and also because the proof shows, among other things, that the Fleet Corporation refused such reconciliation of accounts under which Groton claimed there was upwards of
476 $1,000,000 due it, in accordance with the announced determination of the Fleet Corporation to refuse to carry out the terms of the March 26, 1920, contract and to insist upon rescission thereof immediately following its making.

Sixteenth. To the finding on page 22 of said report that by the contract of March 26, 1920 (Exhibit 5), and in accordance with its terms the parties intended to and did adjust all differences then existing between them to that date and that Groton in Article XII, section 1, of said Exhibit 5 released the Fleet Corporation from all claims, demands, causes of action, etc., which it had against said Fleet Corporation to that date, except the matters specifically excluded, because contrary to all the evidence in the case.

Seventeenth. To the finding on page 22 of said report that Groton did obtain benefits and considerations by reason of the contract (Exhibit 5), because contrary to the evidence in the case.

Eighteenth. To the finding on page 22 of said report that no fraud, deceit, duress, or misrepresentation was resorted to by the representatives of the Fleet Corporation to cause the contract of March 26, 1920, to come into existence, neither was it executed under a mutual mistake of fact and that there was not any claim made that it was obtained by fraud, duress, or the like or had been executed under a mutual mistake of fact until the litigation in question had long passed the point of its primary stage, because contrary to the evidence in the case and for the reasons set forth in exception ninth herein.

Nineteenth. To the finding on page 23 of said report that no rescission of the contract (Exhibit 5) was ever asked for at
477 any time until the present bill was filed in July, 1923, because contrary to the evidence, and because the proof shows that no sooner had the contract of March 26, 1920, been executed than the Fleet Corporation refused all payments thereunder, applied for reinstatement of the receivers, and treated said contract as rescinded, and because the evidence shows that until this trial the Fleet Corporation never receded from their attitude of rescission of said contract taken at said time.

Twentieth. To the finding on page 24 of said report that it is due to the conduct of Groton that the portion of the contract (Exhibit 5) which provided for an audit, etc., has not been complied with, because there is no competent evidence to sustain this finding, and because despite repeated demands the Fleet Corporation refused

steadily to furnish Groton or its creditors any audit or accounti
and compelled Groton and its creditors to institute its present
for an accounting.

Twenty-first. To the finding on page 24 of said report that a co
plete accounting on the main case is not essential to the determinat
of the issues raised by said first separate defense, because contr
to the evidence in the case and because the proof shows that Gro
entered into the March 26, 1920, contract in reliance upon cert
representations and assumptions as to the state of the accounts
tween the parties, the actual cost of the completed ships and oth
wise, and that these representations and assumptions were to so
extent at least false and untrue and because the extent to which th
representations and assumptions were untrue and their
478 teriality and controlling effect can only be determined b
complete accounting under the original construction contra

Twenty-second. To the finding on page 24 of said report that
claim that large quantities of lumber, material, etc., paid for by
Fleet Corporation, were taken into the possession of the latter
no credit given to Groton under the various contracts referred t
not sustained by the proof offered, because said finding is not
terial to the issues raised by the first separate defense and beca
no testimony with respect thereto was offered by either party.

Twenty-third. To the finding on pages 24 and 25 of said rep
that the contract dated March 26, 1920, is not null and void; tha
was operative and of force and effect and so considered by the par
thereto until the filing of this bill of complaint; that Groton accep
and retained the benefits received under said contract; that said
tract is binding as an accord and satisfaction of all claims accord
to its terms between the parties thereto, except as is otherwise
cluded or reserved therein; that said contract should not be set a
either in whole or in part, because contrary to the evidence and
law applicable to this case.

Twenty-fourth. To the conclusions as to the first separate defe
on page 26 of said report:

(a) That the defendant has sustained the burden of proof on
issues raised by the first separate defense so called.

(b) That the issue as to whether the contract of March 26,
(Exhibit 5), was accepted by Groton in full settlement as
479 compensation for and in accord and satisfaction of any and
claims existing in its favor up to said March 26, 1920, exclus
however, of the matters reserved therein and for further reconci
tion or audit I hereby find in favor of the defendant.

(c) That all the issues raised by said first separate defense I
in favor of the defendant, because contrary to the evidence and

law applicable to this case and because a complete accounting is essential to a proper decision on the issue of fraud and mutual mistake and other issues raised herein, and being the only means of determining whether the facts represented by the Fleet Corporation and assumed by Groton at the time the March 26, 1920, contract was made, were true or not and to what extent and in what particulars.

Twenty-fifth. To the reasons for conclusions as to the first separate defense on pages 27 to 33, inclusive, of said report, and to each and every one of said reasons for conclusions, because contrary to the evidence.

Twenty-sixth. Complainant excepts generally to all of the findings, conclusions, and reasons for conclusions as to the first separate defense contained in the master's report on the ground that same are contrary to and not justified by the evidence in the case, are unwarranted under the order of reference to the special master, and are erroneous as a matter of law.

Dated, October 22, 1926.

HERBERT B. LEE,
CHARLES B. WALLER,
Solicitors for P. Leroy Harwood, as Trustee in Bankruptcy of Groton Iron Works, Complainant.

480 In United States District Court

Exceptions of defendants, Isaac Siegel and John M. P. Thatcher

The defendants, Isaac Siegel and John M. P. Thatcher, as ancillary receivers of the United States Steamship Company, hereby respectfully except to so much of the report made herein by Hon. David E. Fitzgerald, special master, and dated the 4th day of October, 1926, as refers to the first separate defense interposed by the defendant, United States Shipping Board Emergency Fleet Corporation, in its answer to the bill of complaint herein in the particulars and on the grounds set forth in the exceptions to said report of P. LaRoy Harwood as trustee in bankruptcy of Groton Iron Works dated the 22nd day of October, 1926.

Dated, October 22nd, 1926.

EDWARDS, MURPHY & MINTON,
Solicitors for Defendants, Isaac Siegel and John M. P. Thatcher, As Ancillary Receivers, etc., No. 26 Liberty Street, Borough of Manhattan, City of New York.

It is stipulated that the exceptions of said intervenors-defen to the master's report are identical with those of complainant.

481 In United States District Court

Motion for jury trial of issues raised by exceptions to repo master as to first separate defense

Please take notice that on the annexed affidavit of Frankli Mills, verified on the 28th day of January, 1927, and the repo Hon. David E. FitzGerald, special master, herein dated the 4th of October, 1926, and the exceptions thereto heretofore filed h and upon all the other papers and proceedings had and filed h the exceptions of the defendant, United States Shipping B Emergency Fleet Corporation, to said special master's report an findings therein so far as they relate to the fourth separate and cial defense of said defendant will be brought on for hearing stated term of this court, to be held at the city hall in the ci South Norwalk, Connecticut, on the 3rd day of February, 192 10.30 o'clock in the forenoon, or as soon thereafter as counsel c heard, and a motion will be made at the time and place aforesai an order directing as follows:

I. That the exceptions taken and filed by said defendant h to said report of said special master, dated the 4th day of Oct 1926, and to the findings therein, so far as the same relate to fourth separate and special defense, be overruled and stricken

II. That the exceptions taken and filed by Isaac Siegel and M. P. Thatcher, as ancillary receivers of the United States S ship Company, to said special master's report, dated the 4th of October, 1926, and the findings therein so far as they rela the first separate and special defense set forth in the answ

482 the defendant Fleet Corporation herein, be sustained and the issues raised by said exceptions be calendared an down for trial in the form set forth in said exceptions, or on framed therefrom, or in such other form as this court may d before this court and a jury at the next jury term of this court that said ancillary receivers have the right on said trial to cal nesses and introduce further evidence in addition to that set in the testimony heretofore taken before said special master.

III. That said ancillary receivers have such other and fu relief as to this court may seem just.

Dated, New York, January 28th, 1927.

Yours, etc.,

EDWARDS, MURPHY & MINTON,
Solicitors for Defendants, Isaac Siegel and John M. P. Thatcher, As Ancillary Receivers of United States Steamship Company.

To:

CHARLES E. PICKETT, Esq.,
Clerk of the United States District Court.

HENRY F. PARMELEE, Esq.,
Solicitor for Defendant, United States Shipping Board Emergency Fleet Corporation.

HERBERT B. LEE, Esq.,
Solicitor for Complainant.

433 In United States District Court

Affidavit of Franklin H. Mills

STATE OF NEW YORK,
County of New York, ss:

FRANKLIN H. MILLS, being duly sworn, deposes and says:

I am a member of the firm of Edwards, Murphy & Minton, the solicitors for Isaac Siegel and John M. P. Thatcher, an ancillary receivers of the United States Steamship Company, as defendants in the above-entitled cause.

The ancillary receivers above referred to were made parties to this cause by an order duly made and entered in this court in September, 1925, and have been represented at the hearings in this cause which have taken place since that time.

When said ancillary receivers were made parties defendant to this cause, the hearings before Special Master Fitzgerald herein were practically completed, and said defendants had no adequate opportunity to present evidence herein.

Said ancillary receivers as defendants as aforesaid now ask for a jury trial of the issues raised by the first separate and special defense set forth in the answer of the defendant Fleet Corporation in the interest of justice for the following reasons:

I. This was originally a jury case on the law side of this court and was removed to the equity side because this court had permitted the United States of America to institute a foreclosure suit in equity similar to the one pending in the State courts of Connecticut and so closely related to this cause No. 1669 as almost to require, as

484 was ordered, that the foreclosure suit and this suit for dam
proceed together in effect, jointly, with the understan
however, that no rights of the parties should be prejudiced by
removal.

II. The main issue raised by the said first separate defens
volves questions of fraud, mutual mistake, and duress whic
essentially and primarily questions to be decided by a jury.
in equity jury issues are framed where such questions of fact a
presented here arise.

III. It appears from the record herein that exceedingly di
and doubtful questions of fact are involved in this issue which
been before this court in one form or another for more than
years, which questions are exceedingly close and difficult for a
without the aid of a jury, to determine, inasmuch as the eviden
both sides is quite evenly balanced.

IV. The special master in his report herein has apparently
to consider such evidence as was conflicting and to make the fin
thereon as required by the order of reference, and has cont
himself with mere conclusions to the effect that the contra
March 26th, 1920, was not induced by fraud, mistake, or duress

V. The submission of the issues in question to a jury wil
involve any appreciable loss of time or extra expense, becaus
case can be tried at the next jury term of this court, and the r
of the testimony taken before the special master can be submit
the jury without again calling the witnesses who gave such testi

VI. During the time when the testimony was taken befo
special master herein, and for a long time previous thereto
Erwin Morse, who was president of the Groton Iron W
485 when the contract of March 26th, 1920, was negotiated
other officers and representatives of the Groton Iron W
whose testimony would be of the greatest importance in de
the contested issues above referred to, were under indictme
connection with matters involving the entire relations betwe
Groton Iron Works and the Fleet Corporation, and therefore
testimony has so far not been available in this cause.

I am advised that the testimony of the witnesses above re
to may now be available, and the defendant ancillary receivers
referred to, therefore, desire an opportunity to call such witne
order that their important testimony on the issues above refer
may be submitted herein.

VII. This issue is most important to the ancillary receivers
United States Steamship Company, which company is the ow
the entire capital stock of Groton Iron Works, because it is o
interest to said ancillary receivers to establish the claim of th

plainant in this cause and thus create a fund out of which not only the creditors of Groton Iron Works, but also the creditors of the United States Steamship Company, can be paid.

FRANKLIN H. MILLS.

Sworn to before me this 28th day of January, 1927.

FLORENCE BALMAIN,
Notary Public.

486 In United States District Court

Affidavit of Henry F. Parmelee in opposition to motion for jury trial

STATE OF CONNECTICUT,
County of New Haven, ss:

HENRY F. PARMELEE, being duly sworn, deposes and says that he is a special assistant to the Attorney General and under the direction of the Honorable Chauncey G. Parker, general counsel for the Emergency Fleet Corporation, is and has been in charge of this suit for the Fleet Corporation, in association with the United States attorney for this district, and that he is familiar with the procedure heretofore had herein and knows that facts hereinafter stated.

That the said receivers were permitted to intervene herein by an order of this court entered on their motion before Judge Goddard on September 14, 1925, notwithstanding the opposition thereto of counsel for the defendant; that Judge Goddard interlined and added to said order the following, which now constitutes a part of said order:

"Said intervention to be without prejudice to any proceedings heretofore had herein and not to be exercised for purposes of delay."

That this cause was transferred from the law side of this court to the equity side of this court with the consent of complainant in July, 1923, more than two years prior to the intervention of said receivers, and the cause was then pending on a reference to the Honorable David E. FitzGerald as special master to report his findings
487 and recommendations as to the facts herein; that said reference was had on motion of the complainant and constituted a proceeding heretofore had herein which by the terms of the order of intervention could not be prejudiced thereby; that since the said receivers intervened on September 14, 1925, they have been represented by counsel at numerous hearings before the special master and at no time made any objection to such proceedings nor did they at any time indicate an intention to seek a trial by jury of the issues then on trial before the special master.

Deponent deems it an unheard-of proposal and manifestly unallowable that parties may take advantage of a pending reference and

without protest or objection await the event thereof and if the same is not satisfactory to them that they may then successfully urge a retrial before a jury. It is manifest that complainant having selected a reference as a means of trial can not and he has not asked for a retrial before a jury. The procedure was selected by complainant. It resulted plainly in proceedings heretofore had herein, which can not be prejudiced by reason of the intervention.

Deponent submits that by a transfer of the cause to the equity side of the court all right to a jury trial of the issues herein was waived and by proceeding thereafter according to the usual course of equity, without request that issues be framed for a jury, neither the complainant nor the intervenors can with any semblance of reason now appeal to the court's discretion to afford them a new trial before a jury.

Deponent denies that when the ancillary receivers were permitted to intervene they had no adequate opportunity to present evidence herein and asserts that they offered no evidence whatsoever nor did they state any desire to do so.

488 Deponent respectfully submits that the special master herein appointed is more and not less capable of weighing the evidence herein than a jury.

In paragraph 5 of Mr. Mills' supporting affidavit it is stated that the submission of the issues to a jury will not involve loss of time or extra expense, and he suggests the submission of the record of the testimony taken before the special master to the jury. Deponent respectfully submits that the special master had the benefit of observing the witnesses on the stand and that if the intervenors' purpose is merely to have a jury pass upon a written record the court or its master is by far a more capable tribunal than a jury.

Deponent further states that should the case be submitted to a retrial before a jury all of the witnesses who have heretofore testified in behalf of the defendant would of necessity be again called to testify, as well as many others, and the issues, in deponent's opinion, could not be tried in a period less than many weeks and possibly several months before the jury.

Deponent knows of no reason why Mr. Erwin Morse should not have testified before the master, notwithstanding the then-pending indictment against him, as deponent is informed and believes that during the period of the hearings before the special master Mr. Morse was at liberty on bail or otherwise, and that during said hearings no suggestion was ever made by counsel for complainant or counsel for the intervenors of any desire to call Mr. Morse as a witness.

Deponent takes issue with the seventh paragraph of Mr. Mills' affidavit as to the interest of the said ancillary receivers,
489 because deponent is informed that it is the belief of the defendant that an accounting herein, should the contract of March 26, 1920, be set aside as sought by the complainant and the intervenors, would show that Groton Iron Works is indebted to the United States in a sum far in excess of any recovery which complainant might recover herein.

If deponent correctly understands paragraph 2 of the intervenors' notice of motion, it constitutes a request that the court sustain their exceptions to the master's report relative to the first separate defense pro forma and submit the actual determination thereof to a jury; in other words, that the court relinquish its proper function of determining exceptions to the report of its special master and transfer such functions to a jury. Deponent respectfully submits that the established practices in equity gives the parties an absolute right to an adjudication by the court of exceptions taken to a master's report.

Deponent respectfully submits that the suggestion that the proceedings heretofore had before the master be nullified and an entirely new procedure be adopted and the case retried to a jury is preposterous, without warrant in law or in equity, and should not appeal to the court's discretion.

HENRY F. PARMELEE.

Verified February 2, 1927.

490 In United States District Court

Order denying jury trial

This cause came on further to be heard at a term of this court and upon reading and filing the notice of motion dated the 28th day of January, 1927, and the affidavit of Franklin H. Mills, verified the 28th day of January, 1927, in support of said motion, and the affidavit of Henry F. Parmelee, verified on the 2nd day of February, 1927, in opposition thereto, and after hearing Franklin H. Mills, of counsel for the defendants, Siegel and Thatcher, as ancillary receivers of the United States Steamship Company in support of said motion, and Herbert B. Lee, Esq., solicitor for the complainant, also appearing in support of said motion, and after hearing Henry F. Parmelee, solicitor for the defendant, United States Shipping Board Emergency Fleet Corporation, in opposition thereto, it is hereby

Ordered that said motion in so far as the same prays for an order directing that the exceptions and findings referred to in paragraph "II" of said notice of motion be sustained and that the issues raised

by said exceptions be calendared and set down for trial as stated in said paragraph "II" of said notice of motion be, and the same hereby is, in all things denied.

Dated, March 10, 1927.

EDWIN S. THOMAS,
United States District Judge.

491 In United States District Court

Petition of Topping Brothers to Intervene

The petition of Toppings Brothers, the creditor of Groton Iron Works, on behalf of itself and of all other creditors of said Groton Iron Works similarly situated who may desire to become creditors thereto, respectfully alleges and shows to this court:

First. That your petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and that it has its principal office and place of business at No. 118 North 11th Street, in the borough of Brooklyn, county of Kings, city, State, and eastern district of New York.

Second. That during the year 1918 your petitioner at the special instance and request of Groton Iron Works sold and delivered to said Groton Iron Works goods, wares, and merchandise, and furnished materials, which said goods, wares, and merchandise and materials were used in the construction of certain steel ships at that time under construction by said Groton Iron Works for United States Shipping Board Emergency Fleet Corporation, one of the defendants in the above-entitled action, for which said goods, wares, and merchandise, and materials said Groton Iron Works promised and agreed to pay; that said Groton Iron Works did not pay for said goods, wares, merchandise, and materials sold and delivered and furnished by your petitioner as above set forth, and your petitioner ever since has been and now is a creditor of said Groton Iron Works; that there is now due and owing to your petitioner

492 by reason of the premises a balance of five thousand three hundred seventy-nine and 61/100 dollars ($5,379.61) and your petitioner has duly filed with the trustee in bankruptcy of said Groton Iron Works a claim for said amount, which claim has been duly approved by the referee in bankruptcy.

Third. That on or about the 11th day of March, 1919, receivers of the property of said Groton Iron Works were appointed by the Superior Court of the county of New London, State of Connecticut, and on the 17th day of March, 1920, said receivers held a

e property of said Groton Iron Works a shipbuilding plant cated in the town of Groton, State of Connecticut, constructed a cost of upwards of four million dollars ($4,000,000), which lant was encumbered by certain mortgages aggregating approxiately one million seven hundred and fifty thousand dollars $1,750,000); that said receivers held in addition certain claims ainst said defendant United States Shipping Board Emergency eet Corporation on account of the construction cost of said ves- built by said Groton Iron Works for said Fleet Corporation, creased wages ordered by said Fleet Corporation, changes and im- ovements ordered to be made upon said vessels by said Fleet Cor- ration, and for other matters, which claim aggregated upwards of veral million dollars; that said receivers were engaged in complet- the construction of certain stee ships under contracts made by d Groton Iron Works with said Fleet Corporation, and held said operty and claims as above set forth as security for the payment the creditors of said Groton Iron Works of which your petitioner s one.

Fourth. That on or about said 17th day of March, 1920, six of said steel ships constructed by said Groton Iron Works and said receivers for said defendant Fleet Corporation had n completed and three remaining ships were approximately hty-five per cent (85%) completed, and that prior to said 17th of March, 1920, said receivers were negotiating for the sale said shipbuilding plant of said Groton Iron Works for a sum excess of the mortgages thereon.

Fifth. Upon information and belief that prior to said 17th day March, 1920, said Groton Iron Works and said defendant Fleet rporation had been in negotiations for the discharge of said ivers and the restoration of the property held by said receivers said Groton Iron Works; that said Groton Iron Works and l defendant Fleet Corporation were both desirous of having l receivers discharged and of completing ships under construc- in said plant which were then uncompleted, as above set forth; t on or about said 17th day of March, 1920, your petitioner and then other creditors of said Groton Iron Works were requested said Groton Iron Works to consent to the discharge of the ivers and the restoration of its property to said Groton Iron rks, and representations were made to your petitioner and the other creditors by said defendant Fleet Corporation, its officers, agents that if your petitioner and the then other creditors would ent to the discharge of said receivers and the restoration of property to said Groton Iron Works that said defendant Fleet

Corporation would enter into a contract with said Groton Iron Works for the completion of said uncompleted ships and the payment for said completed ships at a price of one hundred ninety-nine and 16/100 dollars ($199.16) per dead-weight ton for said com-
494 pleted ships and two hundred dollars ($200.00) per dead-weight ton for said uncompleted ships, which prices were represented to be the actual cost of said completed ships and of the part of said uncompleted ships up to that time as shown by the books of said Fleet Corporation, and that in addition to such payments said contract would provide further awards and payments to Groton Iron Works for the cancellation of certain contracts, which awards and payments were to consist, among other things, of the sum of five hundred thousand dollars ($500,000) to be applied against the mortgage held by said defendant Fleet Corporation upon the plant of Groton Iron Works as hereinabove set forth, and the delivery to said Groton Iron Works of a wooden ship, a wooden hull, and a bill of material, which said property upon information and belief was at that time of the fair and reasonable value of seven hundred fifty thousand dollars ($750,000), and all of which property would be available for the payment of the claims of your petitioner and the then other creditors of said Groton Iron Works, and that the making of said awards and payments and the delivery of said property, and not otherwise, should constitute a release and discharge of all claims theretofore held by said Groton Iron Works or said receivers against said defendant Fleet Corporation; that in addition said defendant Fleet Corporation; agreed to advance to said Groton Iron Works the sum of two hundred and fifty thousand dollars ($250,000) in cash, which sum was to be paid by said Groton Iron Works to said receivers and applied by them in paying your petitioner and the then other creditors twenty per cent (20%) of the amount of their respective claims.

495 Sixth. Upon information and belief that said representations in regard to the cost of said ships were false and were either known by said defendant Fleet Corporation or its officers and agents to be false, or was made by said defendant under mistake of fact, and were made for the purpose of inducing plaintiff and the then other creditors of said Groton Iron Works to consent to the discharge of said receivers and the return of said property to said Groton Iron Works, and were believed by your petitioner to be true; that relying upon said false representations made by said defendant Fleet Corporation your petitioner and the then other creditors of said Groton Iron Works consented to an order discharging said re-

ceivers, and your petitioner thereafter received from the receivers of said Groton Iron works a payment amounting to twenty per cent (20%) of the amount of its claims, and that thereafter said receivers were duly discharged by order of said Superior Court of the county of New London, State of Connecticut, and surrendered possession of the plant and other property to said Groton Iron Works.

Seventh. Upon information and belief that on or about the 26th day of March, 1920, pursuant to the representations and promises made by said defendant Fleet Corporation to your petitioner and the then other creditors of Groton Iron Works, said Groton Iron Works and said defendant Fleet Corporation entered into a certain contract and agreement, which has heretofore been introduced in evidence before the special master duly appointed in this suit, to which contract your petitioner begs leave to refer with the same force and effect as if herein set forth at length, which contract provided, among other things, that said defendant Fleet Cor-
496 poration should make the awards and payments and should deliver the property hereinabove more specially set forth, and that said Groton Iron works should release and discharge said defendant Fleet Corporation of all claims had by said Groton Iron Works and said receivers against said defendant Fleet Corporation prior to said 26th day of March, 1920.

Eighth. Upon information and belief that thereafter and on or about the 17th day of April, 1920, said Groton Iron Works was advised by said defendant Fleet Corporation that under the terms of said contract made the 26th day of March, 1920, it had received payment in full, although said steel ships were then uncompleted and said Groton Iron Works was without working capital sufficient to complete the same, and that said defendant Fleet Corporation refused to make any of the payments or to deliver any of the property to said Groton Iron Works as provided in said contract.

Ninth. Upon information and belief that it is claimed by said defendant Fleet Corporation that thereafter and on or about the 28th day of April, 1920, said defendant Fleet Corporation and the officers of said Groton Iron Works, without the knowledge or consent of petitioner or of the then other creditors of said Groton Iron Works, did thereupon enter into a new contract and agreement wherein and whereby said defendant Fleet Corporation was relieved of its obligation to make the payments and to deliver the property provided for in said contract made the 26th day of March, 1920, and in reliance upon which agreement your petitioner and the then other creditors of said Groton Iron Works had consented to the discharge

of said receivers and the relinquishing of the property held by said receivers as security for the claim of your petitioner
497 and the then other creditors; that your petitioner is advised by counsel and believes that said agreement made the 28th day of April, 1920, between said defendant Fleet Corporation and Groton Iron Works was made in fraud of the rights of your petitioner and of the then other creditors of said Groton Iron Works and upon information and belief that thereafter said Groton Iron Works and said defendant Fleet Corporation proceeded under said new contract and agreement until the appointment of the plaintiff in the above-entitled action as trustee in bankruptcy for said Groton Iron Works.

Tenth. That your petitioner is informed and believes that the present action was brought by plaintiff for an accounting between said Groton Iron Works and said defendant Fleet Corporation and to set aside said contract made the 26th day of March, 1920, and in particular the provisions of said contract releasing said defendant Fleet Corporation from all claims held by said Groton Iron Works or said receivers against said defendant Fleet Corporation prior to that date; that your petitioner is informed and believes that said defendant Fleet Corporation has interposed a separate defense in said action asserting the validity of said release provisions of said contract as a bar to an accounting by said defendant Fleet Corporation from any matters arising prior to said 26th day of March, 1920; that your petitioner is advised by counsel and believes that by reason of the failure of said defendant Fleet Corporation to perform the terms and conditions of the contract made the 26th day of March, 1920, and to pay the sums and to deliver the property specified therein, and in the representations made by said defendant to your petitioner and to the then other creditors of said Groton Iron Works on the 17th day of March, 1920, as hereinabove set forth
498 said release provisions are in all respects null and void, and must be set aside at least to the extent necessary to satisfy the claims of your petitioner and the then other creditors of said Groton Iron Works; that your petitioner is further advised by counsel and believes that said plaintiff is not in a position to fully assert the rights of your petitioner and the other creditors of said Groton Iron Works as above set forth, since if the facts are as urged by the Fleet Corporation said plaintiff as trustee in bankruptcy of said Groton Iron Works is bound by all acts of said Groton Iron Works, its officers, and agents, and is therefore not able to assert that the subsequent contract made by said Groton Iron Works with said defendant Fleet Corporation was made in fraud of the rights of

plaintiff and the then other creditors of said Groton Iron Works, and that the failure to pay said sums and deliver said property has made said release provisions in all respects null and void; that your petitioner is informed by counsel and believes that the rights of plaintiff and the then other creditors of said Groton Iron Works can be fully asserted only by the intervention of petitioner and such of the other creditors of said Groton Iron Works as are similary situated and may desire to join in said intervention and that unless your petitioner and such other creditors are allowed to intervene there is danger that the rights of your petitioner and such other creditors in the premises may be wholly lost.

Eleventh. That the facts set forth above were unknown to your petitioner at the time of the transactions above set forth and came to the knowledge of your petitioner only through the testimony introduced before the Special Master in the above-entitled action, and this intervention is sought not for the purposes of delay, or for the purpose of introducing further evidence in this
499 case, but solely in order that your petitioner and such other creditors as may desire to join with your petitioner may assert before this court their rights in respect to the premises.

Twelfth. That your petitioner is informed and believes that the property held by the receivers of said Groton Iron Works on said 17th day of March, 1920, including the claims held by said receivers against defendant Fleet Corporation, was more than sufficient to pay your petitioner and the then other creditors of said Groton Iron Works the amount of their claims in full, and your petitioner is further advised by counsel and believes that consent by your petitioner and the then other creditors of said Groton Iron Works to the discharge of said receivers and the surrender to said Groton Iron Works of the property and claims held by said receivers by reason of the false representations made by said defendant Fleet Corporation, its officers, and agents, whether said false representations were made with intent to defraud or under mutual mistake of fact gives to your petitioner and the then other creditors of said Groton Iron Works the right to have said release provisions set aside to the extent necessary to satisfy the claims of your petitioner and the then other creditors in full, and that your petitioner is further advised by counsel and believes that the failure of said defendant Fleet Corporation to make the awards and payments and to deliver the property in accordance with the contract in consideration of which such amount was given by your petitioner and the then other creditors of said Groton Iron Works, makes said release provisions null and void as to your petitioner and the then other creditors of said

Groton Iron Works, and that the subsequent agreement claimed by said defendant Fleet Corporation to have been made by it with said Groton Iron Works whereby the producing of said awards
500 and payments and the delivery of said property is alleged to have been waived by said Groton Iron Works was made in fraud of the rights of your petitioner and the then other creditors of said Groton Iron Works and gives to your petitioner and said then other creditors the right to have the same set aside and have said release provisions decreed to be inoperative and no force and effect or in the alternative that said defendant Fleet Corporation be decreed to perform said agreement to the extent necessary to pay in full the claims of your petitioner and of said then other creditors of said Groton Iron Works.

Thirteenth. That your petitioner is informed and believes that unless your petitioner and such other creditors of Groton Iron Works as are similarly situated are allowed to intervene in this action that said rights may be wholly lost and that your petitioner and said other creditors have no adequate remedy at law.

Wherefore your petitioner prays that an order may be made herein permitting your petitioner and any other creditors of said Groton Iron Works who are similarly situated to intervene as defendants herein and to file an answer in order to assert and protect the rights and equities of your petitioner and said other creditors in the premises, and your petitioner will ever pray, etc.

Dated, New York, March 12th, 1927.

TOPPING BROTHERS,
By HERBERT EDGE,
President, Petitioner.

BREED, ABBOTT & MORGAN,
Solicitors for Petitioner.

Office & post office address, 32 Liberty Street, Borough of Manhattan, New York City.

(Verified by Herbert Edge, March 12, 1927)

501 In United States District Court

Motion to dismiss petition of Topping Brothers to intervene

Comes now the defendant by its solicitor, and on the papers and proceedings heretofore had and filed herein respectfully moves the court to dismiss the petition of Topping Brothers for leave to intervene herein as party defendant, for the reasons hereinafter set forth:

1. Said petition does not allege or claim a legal interest in the subject of suit such as to entitle the petitioner to become a party thereto.

2. Said petition does not allege or claim a legal interest in the subject of suit adverse to the plaintiff, and the petitioner can not, therefore, be made a party defendant.

3. The allegations of the petition do not show that the presence of the petitioner is necessary or proper to a complete determination of the cause.

4. The claims of the petitioner as set forth in its petition, except in so far as petitioner is legally represented by the plaintiff as trustee in bankruptcy, are not in subordination to the main proceeding, but the petitioner attempts to set forth a cause of action accruing directly to the petitioner as a creditor independent of and not subordinate to the claims of the plaintiff as trustee in bankruptcy of Groton Iron Works, which constitute the subject of suit.

5. The petition does not allege that the plaintiff trustee in bankruptcy has failed to honestly and efficiently assert the rights of Groton Iron Works and its creditors, including the petitioner.

6. The petition does not assert any claim which can not be and has not already been asserted by the plaintiff.

502 7. The petitioner should be denied the relief sought because of laches.

8. Under the equity rules and the practice and procedure of this court in equity the petitioner is not entitled to and should not be permitted to intervene and petition should be dismissed.

Dated, March 16, 1927.

JOHN BUCKLEY,
United States Attorney, Solicitor for United States Shipping Board Emergency Fleet Corporation,
By HENRY F. PALMER,
Special Assistant to the Attorney General,
Of Counsel.

503 In United States District Court

Order dismissing petition to intervene

April 30, 1928

The petition of Topping Brothers for leave to intervene as defendants herein on behalf of themselves and other creditors of Groton Iron Works similarly situated having come on to be heard on defendant's motion to dismiss said petition, on the 21st day of

March, 1927, and after hearing counsel for Topping Brothers and counsel for complainant and counsel for defendants Isaac Siegel and John M. P. Thatcher, as ancillary receivers of United States Steamship Company, in opposition to said motion, and counsel for defendant United States Shipping Board Emergency Fleet Corporation in support thereof, and upon due deliberation thereof and upon memorandum of the court dated April 25, 1927, endorsed upon the motion to dismiss, as follows:

"For reasons set forth herein, the motion to dismiss it granted," it is

Ordered that the petition of Topping Brothers for leave to intervene as defendants herein be and the same hereby is denied, and the motion to dismiss said petition is hereby granted.

EDWIN S. THOMAS,
United States District Judge.

504 In United States District Court

Opinion of court on final hearing

THOMAS, District Judge:

This matter is before the court on exceptions to the master's report filed by plaintiff, defendant, and various other parties in interest.

The suit was brought as an action at law in the Superior Court of Connecticut, removed to this court, and finally to the equity side of this court on a substituted bill of complaint seeking an accounting and decree for damages because of asserted breaches of contract for ship construction and relief from the legal effect of a release contained in the fifth and last of the contracts (Exhibits 5) dated March 26, 1920, asserted to have been secured from Groton Iron Works by fraud and misrepresentation and repudiated and abandoned. The first separate defense asserts the release to be a complete defense to all alleged cause of action arising prior to the date of the release.

The fourth separate defense is a complete defense asserting that the United States was the real party in interest; that the Fleet Corporation in making the contracts and carrying them out acted only as an agency of the Government without personal liability.

The first and fourth separate defenses were severed and referred to a special master to take evidence and report the same and his findings.

The special master held many hearings, took voluminous proofs, and after hearing exceptions to his draft report filed his report, to which exceptions are now taken, sustaining the first separate defense

of accord and satisfaction as to the larger part of the cause
505 of action which is asserted to have arisen prior to March 26, 1920, and overruling the fourth separate defense, which asserted a complete defense of no liability on the part of the Fleet Corporation.

An examination of the elaborate and exhaustive briefs submitted in support of the exceptions fail to convince me that there was error in the master's findings with reference to the first separate defense of accord and satisfaction. At to this defense he not only formulated the issues correctly, but I think that he has correctly determined them. Because the plaintiff charges that the contract of release upon which the defendant relies is tainted with fraud, the burden of proving this was upon plaintiff. Indeed, it is upon this predicate that the jurisdiction of equity is invoked to annul the release.

However, the master has found not only that the plaintiff has not sustained the allegations of the bill, but that the defendant has sustained the burden of proof on the issues raised by this defense. A question of fact was tried out before him. I have been confronted with no adequate reason for setting aside his findings as to the first separate defense. It is suggested and argued that the court is not bound by those findings, that they are advisory only, and that the court has power to disregard them. But the court also has the power to approve and confirm them, and if the mere possession of power is a valid argument for its exercise the arguments are balanced. These findings have indeed been attacked with considerable vehemence and loquacity, but in the welter of words I have been unable to discover any adequate grounds for reversing them.

There is one contention pressed by the plaintiff which per-
506 haps requires special comment, and that is that the acts and conduct of those who represented the Groton Iron Works in its negotiation with the defendant should not conclude the creditors who are represented by the trustee. I have been referred to no precedent to sustain the contention. In the present litigation the trustee's rights are wholly derivative; he has no other rights than those the bankrupt corporation itself would have had if bankruptcy had not intervened. That which was not fraudulent against the corporation did not become so because innocent creditors suffer the consequences. Therefore, the exceptions to the first separate defense are overruled.

Fourth separate defense

As to this, I am unable to support the master's conclusions, for the reason that the fourth separate defense, alleging in substance

that the defendant was acting as an agency of the United States selected by the President under the powers conferred upon him by the act of June 15, 1917, and that the United States is the real party in interest and that this defendant did not assume to be and is under no person liability to the plaintiff have been established by the evidence. Under the well-established principle stated by Marshall, C. J. in Hodgeon v. Dexter, 1 Cranch 345, such agency, if proved, is a complete defense. See also Parks v. Ross, 11 How. 362.

Pursuant to the power conferred upon the President by the act of June 15, 1917, there issued an Executive order, dated December 3, 1918, which read as follows:

"By virtue of the authority vested in me by said laws, supplementing said Order No. 2664, but in no way limiting or restricting
507 the effect thereof, or of acts heretofore done in pursuance thereof, I do hereby delegate all the power and authority so vested in me, and so direct that * * * '(1) The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction.'"

It then, in a paragraph numbered (2), delegates certain powers to the Shipping Board and concludes as follows:

"(3) All acts heretofore done by said corporation or by said board with reference, respectively, to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

"WOODROW WILSON.

"THE WHITE HOUSE,
"*3 December, 1918.*"

The first contract in this suit was executed June 15, 1917, the date of the passage and approval of the urgent deficiencies act.

It seems clear that on that date the President could himself have properly entered into that contract for the construction of ships. It is also clear that everything done under the contract was done subsequent to the act of June 15, 1917, when the President had full power and authority to do all of these things himself.

It also seems clear that everything done pursuant to the contract of June 15, 1917, in relation to shipbuilding, either directly
508 or indirectly, comes within the ratification clause of the Executive order, because it provided that—

"All acts heretofore done by said corporation * * * with reference * * * to the kinds of powers or authority herein delegated * * * are hereby ratified and confirmed."

The effect of this order was to make certain that everything done by the Fleet Corporation in connection with the construction of ships for the Government was admitted by the Government to be Government work and all acts of that nature were officially ratified and confirmed as such. The alleged cause of action set forth in the bill charged the defendant only with acts done as a governmental agency. If there had been any doubt about that, it was removed by Executive ratification and confirmation.

It will serve no useful purpose to refer to the evidence offered on this fourth separate defense, but it is sufficient to say that the defendant properly met the burden which was upon it to prove facts which sustained its contention. The act of Congress authorized the President to construct ships only for the United States and for its war necessities, and he was the exclusive judge of such necessities. It follows that when he delegated such powers to the Shipping Board Emergency Fleet Corporation, acting under such powers, it could only construct ships for the United States pursuant to the war policy of the United States to build ships, and this policy was the policy of the United States and not the policy of the Fleet Corporation.

Nor is it necessary to cite or discuss the many cases relied upon by both sides in support of their respective contentions be-
500 cause, since the case was submitted, there have been at least two decisions which are regarded as determinative of the legal proposition involved.

On January 3rd, 1928, the Supreme Court of the United States decided United States Shipping Board Emergency Fleet Corporation v. Western Union Telegraph Co., 48 S. Ct. 198—and it was there held that the Fleet Corporation was entitled to the benefit of Government rates for telegrams, not because it is an instrumentality of the Government, but because it is a department of the United States and as such only—was it entitled to the reduced rate.

In the course of the opinion Mr. Justice Brandeis said:

"The claim that the Government rates do not apply to messages of the Fleet Corporation is rested in part upon the fact that it is, in form, a private corporation; in part upon the fact that it is an agency of the Shipping Board as distinguished from a bureau or division; in part upon the fact that, to a considerable extent, it is engaged in a business which involves competition with private shipowners. These arguments do not support the claim; but they

make necessary a statement of the facts concerning the organization and activities of the Fleet Corporation * * *.

"Besides powers conferred upon the Fleet Corporation by the general corporation law of the District of Columbia (31 Stat. 1280 et seq., as amended), it was vested, by delegation from the President, with the powers conferred upon him by act June 15, 1917 * * *.

These services of the Fleet Corporation were obviously of a
510 public nature. It has never done any business, or conducted any operations, except on behalf of the United States."

Then follows a résumé of the history of the organization and operation of the Fleet Corporation and an answer to the claims made by the Western Union, which are, in part, the claims made by the plaintiff in the case at bar. All of these claims are answered by Justice Brandeis against the Western Union in the opinion to which reference is made, and, as I view it, the answers there apply here with equal force. The learned justice then concludes:

"The Fleet Corporation is entitled to the Government rate, not because it is an instrumentality of the Government, but because it is a department of the United States within the meaning of the post roads act."

The plaintiff cites and relies with assurance upon Sloan Shipyards Corporation v. United States Shipping Board Emergency Fleet Corporation, 258 U. S. 549, to sustain his contention that the Fleet Corporation was liable to be sued anywhere upon its contracts and for its torts, notwithstanding the fact that it was a Federal agency and that its stock was taken entirely by the United States.

There is no inconsistency with the law of the Sloan case and the law set forth in the Western Union case. Admittedly suit can be brought against the Fleet Corporation, but it is a complete defense if it shows that it acted solely as a governmental agency in behalf of the United States. The defendant has shown this by evidence, and it is further supported by the Western Union case. It is
511 in this respect that the plaintiff fails to differentiate the law as set forth in the two cases discussed.

On January 17, 1928, the Court of Appeals of the State of New York decided, United States v. Brown, 247 N. Y. 211, and it was said and there is nothing in the shipping act or in the President's proclamation which makes untenable, as matter of law, the theory that the United States Emergency Fleet Corporation acted as agent for the United States in making the charter in question. On page * * * Judge Andrews said:

"On July 11th, in pursuance to the statute, the President did designate the Shipping Board and Fleet Corporation as its agents for carrying out the powers conferred upon him.

"(1, 2) Of all this we may take judicial notice, even of the incorporation of the Fleet Corporation and of the fact that the United States became its sole stockholder. Unlike the ordinary private corporation, its public character and the historical quality of its acts dispense with the need of such formal testimony as usually might be required. It is against such a background that we must view the facts appearing in the papers before us.

"It is clear that the Fleet Corporation acts in two capacities. Notwithstanding the ownership of its stock by the United States, it is a private corporation. As such it is a distinct entity. It may make contracts and transact the business for which it is organized. It may sue and be sued. Then it is subject to the statute of limitations * * *. But when a recovery may be had and a judgment
512 enforced against it, again we do not discuss. Here that question is not involved. Further, under the act of 1917 and the proclamation it had extraordinary powers. Under them it acts as an agency of the Government for the prosecution of the war. It expends moneys of the United States appropriated for that purpose on behalf of the Government and to serve its ends.

"It is evidently the theory of the plaintiff that in making this particular charter it so acted merely as agent and not in its corporate capacity. The United States was the principal. We are told that as agent of the United States it chartered the Nordlyn from the defendant in September, 1918; as agent it retained it until July, 1919; that as such agent it paid the charter hire and made this overpayment; that as agent it has demanded reimbursement, which was refused, and to recover which, not it but the United States brings this action in our courts. Nothing in the statutes or the proclamation makes such a theory untenable as a matter of law. Belknap v. Schild, 161 U. S. 10, 17, 16 S. Ct. 443, 40 L. Ed. 599; Dugan v. United States, 3 Wheat. 172, 4 L. Ed. 362. * * *

"If the United States may maintain this action to recover public moneys, appropriated for war purposes, paid out by its agent, then its rights are not affected by our statute of limitations."

As the evidence before the master shows that the Fleet Corporation sustained the burden of showing that it acted under the contract in suit solely as a governmental agency in behalf of the United
513 States, it follows that under the decisions in the Western Union case and the Brown case that the defendant has established its fourth defense. My conclusion is supported by Fleet Corporation v. Galveston Drydock Co. (C. C. A. 5th), 13 Fed. (2d) 607, 612 (certiorari denied, 273 U. S. 725), Astoria Marine Iron Works v. Fleet Corporation (D. C. Oregon), 295 Fed. 415; Tanner-Gross Co. v. El-

well (S. D. N. Y.), 2 Fed. (2d) 396; and United States v. Skinner & Eddy Corp., 5 Fed. (2d) 708.

I therefore conclude that from the allegations of the bill and the proofs taken by the master the Fleet Corporation was acting as agent of the United States in behalf of the United States, under the statutory powers granted to the President and by him delegated to the Fleet Corporation, to procure the construction of ships for the United States. The Fleet Corporation is, therefore, not liable. The defendants' exceptions to the fourth special defense are sustained and a decree may be submitted dismissing plaintiff's bill.

Ordered accordingly.

APRIL 7, 1928.

514 In United States District Court

Final decree

This cause came on to be heard on the fourth day of February, 1927, upon the report of Hon. David E. Fitzgerald, special master, upon the issues raised by the first and fourth separate defenses, heretofore ordered to be severed and referred for taking proofs and reporting same, determining the questions actually at issue under said defenses, findings thereon and reporting the same to this court for its advisement in advance of the other issues raised in the answer, and exceptions by the plaintiff to the findings as to the first separate defense, a partial defense, and exceptions by the defendant to the findings as to the fourth separate defense, a complete defense, said exceptions having been heard and overruled by the special master, and upon the pleadings, the said report, the testimony and other proofs adduced before the said special master, and hearing counsel for the respective parties, and on due consideration it is ordered, adjudged, and decreed

1. The plaintiff's and the intervenor's exceptions to the special master's report sustaining the first separate defense are overruled and the said report as to the first separate defense is accepted and confirmed and adopted and the said first separate defense is sustained and the issues raised thereby found for the defendant.

2. The defendant's exceptions to the special master's report as to the fourth separate defense are sustained and the facts stated in the said exceptions and alleged in the said fourth separate defense are found to have been proved and to constitute a complete defense to the cause alleged in the bill of complaint, and it is further

515 Ordered, adjudged, and decreed that the plaintiff's bill of complaint be, and it hereby is, dismissed.

April 30, 1928.

EDWIN S. THOMAS,
United States District Judge.

In United States District Court

Complainant and intervenors notice of appeal

Please take notice that P. LeRoy Harwood, as trustee in bankruptcy of Groton Iron Works, complainant above named, and Isaac Siegel and John M. P. Thatcher, as ancillary receivers of United States Steamship Company, intervenors and defendants above named, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit, from the decree of the United States District Court for the District of Connecticut, rendered in the above-entitled cause on the 30th day of April, 1928, dismissing the bill of complaint herein, and that said parties do hereby appeal from each and every part of said decree as well as from the whole thereof; and

You will please to take further notice that said P. LeRoy Harwood, as trustee in bankruptcy of Groton Iron Works, complainant herein, and Isaac Siegel and John M. P. Thatcher, as ancillary receivers of United States Steamship Company, intervenors and defendants herein, hereby appeal to said United States Circuit Court of Appeals for the Second Circuit from the order of the United States District Court for the District of Connecticut, made and entered in the above-entitled cause on the 10th day of March, 1927, denying the motion of said intervenors and defendants, Isaac Siegel and John M. P. Thatcher, as such ancillary receivers, for a trial
516 by jury of the issues raised by the exception of said complainant and said intervenors and defendants, as such ancillary receivers, to the findings and the report of the special master as to the first separate defense contained in the answer of the defendant, United States Shipping Board Emergency Fleet Corporation, herein, dated the 4th day of October, 1926, and that said parties hereby appeal from each and every part of said order as well as from the whole thereof.

Dated, New London, Connecticut, July 26, 1928.

Yours etc.,

HERBERT B. LEE,
CHARLES B. WALLER,
Solicitors for Complainant.

EDWARDS, MURPHY & MINTON,
Solicitors for Defendants,
Isaac Siegel and John M. P. Thatcher,
As Ancillary Receivers of
United States Steamship Company.

To Honorable JOHN BUCKLEY,
United States Attorney for the District of Connecticut,
Solicitor for Defendant, United States
Shipping Board Emergency Fleet Corporation.

CHARLES H. PICKETT, Esq.,
Clerk, United States District Court,
District of Connecticut.

Service of above notice of appeal admitted this 27th day of July, 1928.

JOHN BUCKLEY,
United States Attorney, for Defendant, Fleet Corporation.

Above notice of appeal was filed with clerk of District Court at New Haven, Conn., on July 28, 1928.

517 IN UNITED STATES DISTRICT COURT

[Title omitted.]

Topping Brothers notice of appeal

Please take notice that Topping Brothers, petitioner above named, on behalf of itself and of all other creditors of Groton Iron Works similarly situated, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the order of the United States District Court for the District of Connecticut made and entered the 30th day of April, 1928, denying the petition for leave to intervene as a party defendant in the above-entitled action and granting the motion by defendant United States Shipping Board Emergency Fleet Corporation to dismiss the petition herein,
518 and that said petitioner hereby appeals from each and every part of said order as well as from the whole thereof.

Dated, New York, N. Y., July 27, 1928.

Yours etc.,

BREED, ABBOTT & MORGAN,
Solicitors for Topping Bros., Petitioners Above Named,
15 Board Street, Bor. of Man., City of N. Y.

To:

CHARLES H. PICKETT, ESQ.,
Clerk of the United States,
District Court, District of Connecticut.
CHARLES B. WALLER,
HERBERT B. LEE,
Solicitors for Complainant.
Honorable JOHN BUCKLEY,
United States Attorney, Solicitor for Defendant,
United States Shipping Board
Emergency Fleet Corporation.
EDWARDS, MURPHY & MINTON, Esqs.,
Solicitors for Defendants,
Isaac Siegel and John M. P. Thatcher,
As Ancillary Receivers of
United States Steamship Company.

Service of within notice of appeal admitted this 27 day of July, 1928.

JOHN BUCKLEY,
U. S. Attorney, for Defendant, Fleet Corporation.
HERBERT B. LEE,
CHARLES B. WALLER,
Solicitors for Complainant.
EDWARDS, MURPHY & MINTON,
Solicitors for Intervenors.

Above notice of appeal was filed with clerk of District Court at New Haven, Conn., on July 28, 1928.

619 In United States District Court

Complainant and intervenor's assignment of errors

Come now P. Leroy Harwood, as trustee in bankruptcy of Groton Iron Works, complainant herein, and Isaac Siegel and John M. P. Thatcher, as ancillary receivers of United States Steamship Company, intervenors and defendants herein, and assign error in the decision of the United States District Court for the District of Connecticut in the above-entitled cause and in the rendition of the decree therein as follows:

1. The court erred in sustaining the exceptions of defendant, United States Shipping Board Emergency Fleet Corporation, to the report of the special master herein dated October 4, 1926, in so far as said report finds and concludes that the fourth separate

defense contained in the answer of said defendant is not established and that as proved is insufficient in law to constitute a complete defense to the cause of action set forth in the bill of complaint.

2. The court erred in finding and deciding that defendant, United States Shipping Board Emergency Fleet Corporation, has sustained the burden of proof on the issues raised by the fourth separate defense contained in its answer.

3. The court erred in finding and deciding that defendant, United States Shipping Board Emergency Fleet Corporation, has proven by a preponderance of the evidence that it was not the party with which Groton Iron Works contracted as set forth in the bill of complaint and that said Groton Iron Works contracted and had been dealing with the United States of America.

520 4. The court erred in refusing to adopt and confirm the report of the special master in so far as he decided therein that defendant, United States Shipping Board Emergency Fleet Corporation, has not sustained the burden of proof on the issues raised by the fourth separate defense contained in its answer.

5. The court erred in refusing to adopt and confirm the report of the special master in so far as he decided therein that defendant, United States Shipping Board Emergency Fleet Corporation, has failed to prove by a preponderance of the evidence that it was not the party with which Groton Iron Works contracted as set forth in the bill of complaint herein, but that it contracted or had dealings with the United States of America.

6. The court erred in finding and deciding that defendant, United States Shipping Board Emergency Fleet Corporation, in all the matters covered by the bill of complaint herein was acting as an agent or agency of the United States of America, selected by the President under the powers conferred upon him by the act of Congress approved the 15th day of June, 1917.

7. The court erred in finding and deciding that defendant, United States Shipping Board Emergency Fleet Corporation, was not the principal in any of the contracts made by it with Groton Iron Works as set forth in the bill of complaint herein, and is not liable to account under any of said contracts or for any breach of the same.

8. The court erred in finding and deciding that the United States of America is the principal and real party in interest under each of the contracts made by defendant, United States Shipping Board Emergency Fleet Corporation, with Groton Iron Works, as set forth in the bill of complaint herein, and that any claim by

521 said Groton Iron Works thereunder must be asserted against said United States of America.

9. The court erred in refusing to adopt and confirm the report of the special master in so far as he found therein that defendant

United States Shipping Board Emergency Fleet Corporation, during the period of time referred to in the pleadings pursued a course of conduct similar to that of any public or private business corporation and is liable to be sued as any such corporation.

10. The court erred in refusing to adopt and confirm the report of the special master in so far as he found therein that defendant, United States Shipping Board Emergency Fleet Corporation, did assume a personal liability under the contracts referred to in the bill of complaint herein and is a proper party to this suit.

11. The court erred in refusing to adopt and confirm the report of the special master in so far as he found therein all of the issues raised by the fourth separate defense contained in the answer of defendant, United States Shipping Board Emergency Fleet Corporation, in favor of complainant.

12. The court erred in finding and deciding all of the issues raised by the fourth separate defense contained in the answer of defendant, United States Shipping Board Emergency Fleet Corporation, in favor of said defendant and against complainant.

13. The court erred in finding that the facts stated in the exceptions of defendant, United States Shipping Board Emergency Fleet Corporation, to the report of the special master in regard to
329 the fourth separate defense and alleged in said fourth separate defense have been proved and constitute a complete defense to the cause of action alleged in the bill of complaint.

14. The court erred in deciding that the Executive order of the President of the United States, dated December 3, 1918, issued after the execution of contracts known as 15 W. H., 57 S. C., and 225 S. C., and supplemental contract dated September 30, 1918 (Exhibits 1, 3, 4, and 2, annexed to the bill of complaint), between Groton Iron Works and defendant, United States Shipping Board Emergency Fleet Corporation, and purporting to ratify and confirm acts done by said defendant in behalf of the United States of America, relieved said defendant from personal liability assumed by it under said contracts.

15. The court erred in its construction of contracts known as 15 W. H., 57 S. C., and 225 S. C., and supplemental contracts dated September 30, 1918 (Exhibits 1, 3, 4, and 2, annexed to the bill of complaint), between Groton Iron Works and defendant, United States Shipping Board Emergency Fleet Corporation, in holding that said contracts were not made by Groton Iron Works, with said defendant as principal, but by Groton Iron Works with the United States of America.

16. The court erred in denying the motion made by intervenors and defendants, Isaac Siegel and John M. P. Thatcher, as ancillary

receivers of United States Steamship Company, to overrule and strike out the exceptions taken and filed by defendant, United States Shipping Board Emergency Fleet Corporation, to the report of the special master and to the findings therein in so far as the same relate to the fourth separate defense contained in the answer of said defendant.

523 17. The court erred in denying the motion made by intervenors and defendants, Isaac Siegel and John M. P. Thatcher, as ancillary receivers of United States Steamship Company, to sustain the exceptions taken and filed by them to the report of the special master, and to the findings therein in so far as they relate to the first separate defense contained in the answer of defendant, United States Shipping Board Emergency Fleet Corporation, and that the issues of fact, raised by said exceptions, be calendared and set down for trial before the court and a jury.

18. The court erred in making the order dated March 10, 1927, denying the motion made by intervenors and defendants, Isaac Siegel and John M. P. Thatcher, as ancillary receivers of United States Steamship Company, to sustain the exceptions taken and filed by them to the report of the special master and to the findings therein in so far as they relate to the first separate defense contained in the answer of defendant, United States Shipping Board Emergency Fleet Corporation, and that the issues raised by said exceptions be calendared and set down for trial before the court and a jury.

19. The court erred in overruling the exceptions taken and filed by complainant and by intervenors and defendants, Isaac Siegel and John M. P. Thatcher, as ancillary receivers of United States Steamship Company, to the report of the special master in so far as the same relate to the first separate defense contained in the answer of defendant, United States Shipping Board Emergency Fleet Corporation.

20. The court erred in finding and deciding that the special master correctly formulated the issue between the parties in regard

524 to the first separate defense contained in the answer of defendant, United States Shipping Board Emergency Fleet Corporation, and that said issues are as set forth in the report of said special master.

21. The special master in his report, and the court in adopting and confirming the same in respect to the first separate defense contained in the answer of defendant, United States Shipping Board Emergency Fleet Corporation, erred in finding that said defendant did all things necessary to have completed as rapidly as possible the construction of the ships referred to in the various contracts entered into by said defendant with Groton Iron Works.

22. The special master in his report, and the court in adopting and confirming the same in respect to the first separate defense, erred in finding that the terms, conditions, and specifications of the various contracts referred to in the bill of complaint were particularly and specifically based upon the knowledge and experience of those respectively in charge of the affairs of Groton Iron Works and of defendant, United States Shipping Board Fleet Corporation, and that the several contracts and all circumstances attending the carrying out of the same or of any amendment or supplement thereto were what might be expected to arise under the then-existing war conditions.

23. The special master in his report, and the court in adopting and confirming the same in respect to the first separate defense, erred in finding that the parties never went forward to carry out the terms of the agreement of December 20, 1919, between United States Steamship Company and defendant, United States Shipping
195 Board Emergency Fleet Corporation (complainant's Exhibit 25) for the reason that Groton Iron Works was unable to provide funds with which to lift the receivership.

24. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that the representatives of Groton Iron Works had permission to examine the books of the receivers prior to March 26, 1920; that they did not so do at any time during which the terms and conditions of the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), were under discussion; and that no legal excuse has been offered for their failure so to do.

25. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that the representatives and attorneys of the receivers attended the conferences, held with reference to the lifting of the receivership, and discussed the details of the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), prior to and shortly after the execution thereof.

26. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that at the conferences held at Washington, D. C., on March 30, 1920, C. W. Morse declared in substance that with the financial aid which defendant, United States Shipping Board Emergency Fleet Corporation, was to furnish under the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), Groton Iron Works would be able to take care of the finances neces-
196 sary for the completion of the ships referred to in said contract.

27. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that neither prior to March 26, 1920, nor at any other time was fraud, misrepresentation, deceit, or duress practiced or resorted to by either of the parties or their representatives to obtain, or cause to be obtained, the execution of the contract of March 26, 1920 (Exhibit 5 annexed to the complaint).

28. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that following the execution of the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), defendant, United States Shipping Board Emergency Fleet Corporation, caused the sum of $250,000 to be advanced to the receivers in compliance with the terms of said contract.

29. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that under the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), defendant, United States Shipping Board Emergency Fleet Corporation, agreed to pay Groton Iron Works a much larger price for each vessel constructed by Groton Iron Works than that provided for originally in the several contracts covering the same.

30. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense,
527 erred in finding that under the terms of the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint herein), the sum of $500,000 agreed upon in said contract as an adjustment and settlement and growing out of the cancellation of certain of the steel vessels covered by contract known as No. 225 S. C. (Exhibit 4 annexed to the bill of complaint) was not to be paid to Groton Iron Works in cash.

31. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that after defendant, United States Shipping Board Emergency Fleet Corporation, on April 17, 1920, refused to advance any more money under the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), Groton Iron Works did not desire another receivership and sought a new financial arrangement with said defendant, whereby it could obtain the aid necessary to enable it to complete the unfinished vessels in its yards.

32. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that as a further consideration for the advance by the defendant, United States Shipping Board Emergency Fleet Corpo-

ration, of the sum of $1,000,000 to Groton Iron Works the representatives of said defendant insisted that Groton Iron Works waive all claim to the wood ship, hull, and bill of material, to which it was entitled under the terms of the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), and that this was agreed to by Groton Iron Works and accepted by said defendant, United
328 States Shipping Board Emergency Fleet Corporation, and that thereafter, in part consideration of the above, said money was in fact advanced to said Groton Iron Works.

33. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that the officials of Groton Iron Works did not consider necessary the reconciliation of accounts under contract known as WH-15 and contract of September 30, 1918, supplemental thereto (Exhibits 1 and 2 annexed to the bill of complaint) as provided in Article XII, section 2, of the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), and that such reconciliation of accounts has therefore been postponed or waived by the joint action of the parties.

34. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that by the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), the parties intended to and did adjust all differences then existing between them to that date and that Groton Iron Works in Article XII, section 1, of said contract of March 26, 1920, released defendant, United States Shipping Board Emergency Fleet Corporation, from all claims, demands, and causes of action which it had against said defendant to that date, except the matters in said contract specifically excluded.

35. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that Groton Iron Works did obtain benefits and
329 considerations by reason of the contract of March 26, 1920 (Exhibit 5, annexed to the bill of complaint).

36. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that no fraud, deceit or duress, or misrepresentation was resorted to by the representatives of defendant, United States Shipping Board Emergency Fleet Corporation, to cause the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), to come into existence and that neither was said contract executed under a mutual mistake of fact.

37. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred

in finding that no claim was made by Groton Iron Works or by complainant that the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), was obtained by fraud, deceit, duress, or misrepresentation or had been executed under a mutual mistake of fact until this litigation had long passed the point of its primary stage.

38. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that no rescission of the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), was ever asked for at any time until the present bill of complaint was filed in the month of July, 1923.

39. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense,
530 erred in finding that it is due to the conduct of Groton Iron Works that that portion of the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), which provides for an audit of the accounts of said Groton Iron Works and of defendant, United States Shipping Board Emergency Fleet Corporation, has not been complied with.

40. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense erred in finding that a complete accounting between Groton Iron Works and defendant, United States Shipping Board Emergency Fleet Corporation, under all the contracts referred to in the bill of complaint herein is not essential to the determination of the issues raised by said first separate defense.

41. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that the claim of complainant that large quantities of lumber and material paid for by defendant, United States Shipping Board Emergency Fleet Corporation, were taken by said defendant into its possession and no credit was given to Groton Iron Works therefor under the various contracts referred to in the bill of complaint herein is not sustained by the proof offered.

42. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding and deciding that the contract of March 26, 1920 (Exhibit 5 annexed to bill of complaint), is not null and void.

43. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense
531 erred in finding that the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), was operative and of force and effect and was so considered by the parties thereto until the filing of the bill of complaint herein.

44. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that Groton Iron Works accepted and retained the benefits received by it under the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint).

45. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding that the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), is binding as an accord and satisfaction of all claims according to its terms between the parties thereto, except as is otherwise excluded or reserved therein.

46. The special master in his report and the court in confirming and adopting the same in respect to the first separate defense, erred in finding and deciding that the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), should not be set aside, either in whole or in part.

47. The special master in his report, and the court in adopting and confirming the same in respect to the first separate defense, erred in deciding that defendant, United States Shipping Board Emergency Fleet Corporation, has sustained the burden of proof on the issues raised by said first separate defense, so called.

48. The special master in his report, and the court in con-
539 firming and adopting the same in respect to the first separate defense, erred in finding and deciding in favor of defendant, United States Shipping Board Emergency Fleet Corporation, the issue as to whether the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), was accepted by Groton Iron Works in full settlement as just compensation for and in accord and satisfaction of any and all claims existing in its favor against said defendant up to the 26th day of March, 1920, exclusive of the matters reserved therein for further reconciliation or audit.

49. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in finding all of the issues raised by said first separate defense in favor of defendant, United States Shipping Board Emergency Fleet Corporation.

50. The special master in his report, and the court in adopting and confirming the same in respect to the first separate defense, erred in refusing to find that Groton Iron Works was induced to execute the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), and that the creditors of Groton Iron Works assented thereto and to the lifting of the receivership under mutual mistake of fact.

51. The special master in his report, and the court in adopting and confirming the same in respect to the first separate defense, erred

in refusing to find that Groton Iron Works was induced to execute the contract of March 26, 1920 (Exhibit 5 annexed to bill of complaint), and that the creditors of Groton Iron Works assented thereto and to the lifting of the receivership in reliance upon false and
533 fraudulent representations of defendant, United States Shipping Board Emergency Fleet Corporation, and its representatives.

52. The special master in his report, and the court in adopting and confirming the same in respect to the first separate defense, erred in refusing to find that Groton Iron Works was induced to and did execute the contract of March 26, 1920 (Exhibit 5 annexed to the bill of complaint), under duress.

53. The special master in his report, and the court in adopting and confirming the same in respect to the first separate defense, erred in refusing to find that it was the intention of the parties to the contract of March 26, 1920 (Exhibit 5 annexed to bill of complaint), and of the creditors of Groton Iron Works in assenting thereto and to the lifting of the receivership that in so far as said contract purported to release defendant, United States Shipping Board Emergency Fleet Corporation, from all claims of Groton Iron Works arising under the contracts between said defendant and said Groton Iron Works, executed prior to the 26th day of March, 1920, should effect such release, if and only if, the terms and conditions of said contract on the part of said defendant, United States Shipping Board Emergency Fleet Corporation, to be performed should be fully performed by said defendant.

54. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in refusing to find that defendant, United States Shipping Board Emergency Fleet Corporation, failed and refused to perform the terms and conditions of the contract of March 26, 1920 (Exhibit 5 annexed to bill of complaint), on its part to be performed, and that there was a complete failure of consideration under said contract.

534 55. The special master in his report, and the court in confirming and adopting the same in respect to the first separate defense, erred in refusing to find and decide that by reason of the failure of consideration on the part of defendant, United States Shipping Board Emergency Fleet Corporation, under the contract of March 26, 1920 (Exhibit 5 annexed to bill of complaint), the provisions of said contract, and particularly those provisions relating to the release of said defendant, by Groton Iron Works from all

ims and demands which said Groton Iron Works had against said fendant, became null and void and of no force and effect and said oton Iron Works and complainant are not bound thereby.

56. The special master in his report, and the court in confirming d adopting the same in respect to the first separate defense, erred refusing to find that the contract of March 26, 1920 (Exhibit 5 nexed to bill of complaint), was rescinded, abandoned, and can-led by the acts of the parties thereto and in particular by the s of defendant, United States Shipping Board Emergency Fleet rporation.

57. The special master in his report, and the court in confirming d adopting the same in respect to the first separate defense, erred refusing to find and decide that the accounting between com-inant and defendant, United States Shipping Board Emergency et Corporation, and the determination of the amount due com-inant for the construction of ships under the contracts between oton Iron Works and said defendant referred to in the bill of plaint herein should proceed upon the basis of the terms fixed the said contracts and not under the contract of March 26, 1920 (Exhibit 5 annexed to bill of complaint).

58. The special master in his report, and the court in con-firming and adopting the same in respect to the first separate ense, erred in refusing to find that defendant, United States Ship-g Board Emergency Fleet Corporation, by its acts rendered the sideration called for by the contract of March 26, 1920 (Exhibit nnexed to bill of complaint), valueless and thereby made the re-e provisions of said contract null and void and of no force and ct.

9. The special master in his report, and the court in confirming l adopting the same in respect to the first separate defense, erred efusing to find that there was no waiver by Groton Iron Works y any of its creditors or by complainant of any fraud, duress, ual mistake of fact, or failure of consideration by defendant, ted States Shipping Board Emergency Fleet Corporation, in nection with the contract of March 26, 1920 (Exhibit 5 annexed ill of complaint).

). The court erred in holding that complainant was bound by the of Groton Iron Works as a corporation and can not assert table rights possessed by certain creditors of Groton Iron Works inct and different from those of Groton Iron Works in connec-with the contract of March 26, 1920 (Exhibit 5 annexed to of complaint).

. The court erred in making any findings or decisions in respect ny of the issues raised by the first separate defense contained in

the answer of defendant, United States Shipping Board Emergency Corporation, in view of the fact that said Court found the issues raised by the fourth separate defense contained in said answer in favor of said defendant and dismissed the bill of complaint.

536 62. The court erred in accepting and confirming and adopting the report of the special master in respect to the first separate defense contained in the answer of defendant, United States Shipping Board Emergency Fleet Corporation.

63. The court erred in sustaining the first separate defense, contained in the answer of defendant, United States Shipping Board Emergency Fleet Corporation, and in finding the issues raised thereby in favor of said defendant.

64. The court erred in dismissing the bill of complaint herein.

65. The court erred in making and rendering the decree herein dated April 30, 1928, hereby appealed from.

Wherefore appellants pray that for the errors aforesaid the decree of the United States District Court for the District of Connecticut, rendered herein the 30th day of April, 1928, may be reversed with costs and that such decree may be entered by the Circuit Court of Appeals herein as may be just and proper in the premises.

Dated, New London, Connecticut, July 26, 1928.

HERBERT B. LEE,
CHARLES B. WALLER,
Solicitors for Complainant.

EDWARDS, MURPHY & MINTON,
Solicitors for Isaac Siegel and John M. P. Thatcher as Ancillary Receivers of United States Steamship Company, Intervenors and Defendants.

Service of within assignment of errors admitted this 27th day of July, 1928.

JOHN BUCKLEY,
U. S. Attorney for Defendant Fleet Corporation.

Original filed with clerk July 28, 1928.

537 In United States District Court

Topping Brothers' assignment of errors and allowance of appeal

Now comes Topping Brothers, on behalf of itself and all other creditors of Groton Iron Works similarly situated, the petitioner above named in the above-entitled cause, and prays on appeal from the final order against it in said cause entered by the Honorable Edwin S. Thomas, judge of the District Court of the United States for the District of Connecticut, on the 30th day of April, 1928, denying the petition for leave to intervene as a party defendant herein and for its assignment of errors your petitioner says

1. That the court erred in denying the petition of your petitioners on behalf of itself and all other creditors of Groton Iron Works similarly situated for leave to intervene in the above-entitled action as a party defendant.

2. The court erred in granting the motion made by defendant, United States Shipping Board Emergency Fleet Corporation, to dismiss said position.

3. The court erred in holding and deciding that your petitioner not entitled to intervene as a party defendant in this suit.

4. The court erred in entering the order denying the prayer of said petition for leave to intervene as a party defendant and in granting the motion of defendant, United States Shipping Board Emergency Fleet Corporation, to dismiss said petition,

Wherefore petitioner prays for an order allowing said petitioner to appeal to United States Circuit Court of Appeals for the Second Circuit for the correction of the errors so complained of and that a transcript of the record, proceedings, and papers in this cause in so far as the same relate to the petition of your petitioners for leave to intervene as a party defendant therein, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Second Circuit and that for the errors aforesaid the order entered herein on the 30th day of April, 1928, be reversed with costs.

Dated, New York, July 26, 1928.

BREED, ABBOTT & MORGAN,
Solicitors for Topping Bros.,
Petitioners above named.

Office & post-office address, 15 Broad Street, borough of Manhattan, city of New York.

The foregoing appeal is hereby allowed.

Norwalk, July 27, 1928.

EDWIN S. THOMAS,
United States District Judge.

In United States District Court

Statement as provided in order settling contents

By order entered June 29, 1922, P. LeRoy Harwood, as trustee in bankruptcy of Groton Iron Works, was substituted as complainant in place of Groton Iron Works.

On July 27, 1928, complainant and intervenors jointly duly served on defendant, United States Shipping Board Emergency

Fleet Corporation, their notice of appeal herein, the allowance thereof duly made by the court, their assignment of errors, their citation signed by the court, and a cost bond approved by the court in the sum of $250.00, and on July 28, 1928, duly filed the originals thereof, with admissions of service thereon, with the clerk of the District Court of Connecticut at New Haven.

On July 27, 1928, Topping Brothers duly served their notice of appeal herein, the allowance thereof duly made by the court, their assignment of errors, and their citation signed by the court on defendant, United States Shipping Board Emergency Fleet Corporation, and on complainant and on intervenors, and on July 28, 1928, duly filed the originals thereof with admissions of service thereon with the said clerk.

On July 30, 1928, Topping Brothers duly filed a cost bond in the sum of $250.00 with said clerk, a copy of which was served on said defendant, complainant, and intervenors.

540 [Citation in usual form showing service on U. S. Shipping Board et al. omitted in printing.]

541–542 In United States District Court

Order enlarging time, etc.

Upon reading and filing the annexed stipulations, dated August 4th, 1928, it is

Ordered that the time of complainant, intervenors-defendants, and Topping Brothers, as petitioner, all of the appellants herein, for filing the transcript of record and the docketing of the case herein in the United States Circuit Court of Appeals for the Second Circuit, be and the same hereby is, extended to and including the 30th day of September, 1928, and it is

Further ordered that the papers required in connection with the appeal taken by Topping Brothers from the order of this court, dated April 30, 1928, may be printed with the transcript of record in the appeal by complainant and intervenors-defendants in this action in equity No. 1669.

Dated at Norwalk, August 15th, 1928.

EDWIN S. THOMAS,
United States District Judge.

By stipulation and order of the same court, the time of appellants for filing this transcript of record was further extended to and including November 30, 1928.

In United States District Court

Stipulation as to certification

It was stipulated by the parties hereto that the contracts, resolutions, minutes, documents, and other papers introduced in evidence are true and correct copies of the originals thereof.

543 In United States District Court, District of Connecticut

In Equity No. 1669

P. LeRoy, as Trustee in Bankruptcy of Groton Iron Works, complainant

AGAINST

United States Shipping Board Emergency Fleet Corporation and Isaac Siegel and John M. P. Thatcher, as Ancillary Receivers of United States Steamship Company, intervenors, defendants

Order settling contents of record

The appellants in the above-entitled cause, by their solicitors, having petitioned this court for its approval of the contents of the transcript of record on appeal to the Circuit Court of Appeals for the Second Circuit upon due notice to defendant, United States Shipping Board Emergency Fleet Corporation, appellee herein, and said petition having come on to be heard before me on the 19th day of September, 1928, and the appellee by its solicitor having duly appeared and consented thereto, and upon signed stipulation and consent of all parties to this appeal, it is

Ordered that the printed transcript of record on appeal to the United States Circuit Court of Appeals, Second Circuit, in the
544 above-entitled cause, shall consist of the following papers and documents:

1. Substitute complaint in Superior Court.
2. Motion of defendant Fleet Corporation to dismiss same.
3. Order denying motion to dismiss complaint.
4. Order transferring cause to equity.
5. Bill of complaint with Exhibits 1–5, inclusive.
6. Answer of defendant Fleet Corporation.
7. Reply.
8. Memorandum of decision referring issues to special master.
9. Order appointing special master, June 9th, 1924.
10. Order severing first and fourth separate defenses and directing master to hear testimony on issues, etc.
11. Petition of Isaac Siegel and one as ancillary receivers to intervene.

12. Order allowing same.
13. Answer of ancillary receivers, September 30th, 1926.
14. Report of special master, October 4th, 1926.
15. Testimony taken before the master reduced to narrative form, and the following exhibits in full, and a brief statement as to each other exhibit, including verbatim description of parties where desired:

Defendant's Exhibits E, F, G, H, I (being Exhibits 1–5, inclusive, attached to bill of complaint and so printed), M, P, Q, S, T, W, X, Y, A1, B1, C1;

Complainant's Exhibits 6 (in part), 12–22, inclusive (omitting certifications), 24, 26–30, 30–31, and 32.

545 16. Defendant Fleet Corporation's exceptions to master's report of October 4th.
17. Complainant's exceptions to same.
18. Intervenor's exceptions (or statement of identity with complainant's).
19. Petition and notice of motion of intervenors for jury trial.
20. Affidavit of H. F. Parmelee in opposition to motion.
21. Order denying motion, March 10th, 1927.
22. Petition of Topping Brothers to intervene.
23. Defendant's motion to dismiss same.
24. Order dismissing petition of Topping Brothers, April 30, 1928.
25. Opinion of court on final hearing.
26. Final decree.
27. Complainant's and intervenor's joint notice of appeal.
28. Topping Brothers's notice of appeal.
29. Complainant's and intervenor's joint assignment of errors.
30. Topping Brothers's assignment of errors.
31. Statement from clerk's docket and as to allowance of appeal, filing of bond, service of appeal papers, etc.
32. Complainant's and intervenor's joint citation.
33. Citation of Topping Brothers (or statement that one was duly issued and served).
34. Order enlarging time to file transcript.
35. Stipulation that documents introduced in evidence are true copies of originals, as substitute for certificates attached to them.
36. Order as to content of record containing items of this stipulation.
37. Clerk's certificate; and it is

Further ordered that all exhibits not ordered herein to be
546 printed shall be produced in said Circuit Court of Appeals as physical exhibits with the same force and effect as if printed; and that the following

Defendant's Exhibits A, B, C, and D (being same as 8, 9, 10, 11), J, K, L, N, O, R, U, V, Z; complainant's Exhibit 6 (by-laws only), 7, 8, 9, 10, 11, 23, 25, and 31, shall be so presented to said Circuit Court of Appeals on this appeal, and it is

Further ordered that the statement of evidence in this case duly lodged in the office of the clerk of this court by appellants herein as now amended, is hereby approved, settled, and allowed as a true, complete, and correct statement in narrative form of the evidence introduced in this cause, with the exception of parts of the testimony of certain witnesses which are reproduced in the exact words of said witnesses, and it being represented that a full understanding of the testimony of certain witnesses can not be had without a reproduction of part of their testimony in the exact words of the said witnesses, and the court being satisfied that the same is reasonably proper, the setting out of the said testimony in the exact words of the witnesses is hereby approved; and it is hereby further

Ordered that the clerk of the court shall certify the record in accordance with this order and without the requirement of any precipe of any further approval of the evidence by the court.

Dated, September 19, 1928.

EDWIN S. THOMAS,
United States District Judge.

547. [Clerk's certificate to foregoing omitted in printing.]

548 In United States Circuit Court of Appeals for the second circuit

No. 230—October term, 1928

Argued April 3, 1929. Decided May 6, 1929

P. LE ROY HARWOOD, AS TRUSTEE in Bankruptcy of Groton Iron Works, complainant-appellant, v. UNITED STATES SHIPPING BOARD Emergency Fleet Corporation, defendant-appellee, and Isaac Siegel and John M. P. Thacher, as Ancillary Receivers of United States Steamship Company, Intervenors, defendants-appellants.	Appeal from the District Court of the United States for the District of Connecticut.

In the matter of the petition of Topping Brothers, on behalf of itself and all other creditors of Groton Iron Works similarly situated for leave to intervene as a party defendant.

Before MANTON, SWAN, and AUGUSTUS N. HAND, Circuit Judges.

Opinion

Appeal from the District Court for the District of Connecticut.

Suit by P. Le Roy Harwood, as trustee in bankruptcy of the Groton Iron Works, for an accounting under contracts entered into between the Groton Iron Works and the United States Shipping Board Emergency Fleet Corporation. Judgment dismissing the bill of complaint. Plaintiff appeals. Reversed.

Herbert B. Lee, of New York City, and Charles B. Waller, of New London, Conn., for appellant trustee.

Edwards, Murphy & Minton, of New York City (Frederick H. Wood, Herbert B. Lee, W. H. L. Edwards, and William W. Robison, all of New York City, of counsel), for appellants ancillary receivers.

Breed, Abbott & Morgan, of New York City (Hugh S. Williamson, of New York City, of counsel), for appellant Topping Bros.

John Buckley, U. S. Atty., of Hartford, Conn., Chauncey G. Parker, Gen. Counsel U. S. Shipping Board, of Washington, D. C., and Henry F. Parmelee, Sp. Asst. Atty. Gen., of New York City, for United States Shipping Board Emergency Fleet Corporation.

Robert G. Dodge and Laurence Curtis, 2d, both of Boston, Mass., amici curiæ.

MANTON, Circuit Judge. The Groton Iron Works, for whom a trustee in bankruptcy has been appointed, entered into con-
549 tracts with the United States Shipping Board Emergency Fleet Corporation for the construction of ships for the Fleet Corporation. This suit seeks to set aside a contract of settlement made March 26, 1920, on the ground of duress and mutual mistake of fact, and to have it adjudicated that it is unenforceable as an accord and satisfaction between the parties in settlement of certain controversies arising under these previously made contracts for the construction of the ships. The receivers of the United States Steamship Company by intervention became defendants in the suit. They admitted all the allegations of the complaint and prayed for the relief therein asked. The United States Steamship Company was the owner of the outstanding stock of the Groton Iron Works. The answer filed by the Fleet Corporation raised the general issue presented by the complaint and offered two separate defenses, referred to as the first and fourth, with which we are here concerned.

We will consider the "fourth" first, for it raises the question of the proper party defendant. It is claimed in defense that the Fleet Corporation was acting as the sole agent of the United States under the power delegated to it by the President in the act of June 15, 1917

(40 Stat. 182), and that the United States is therefore the real party in interest, and the argument is that the appellee named assumed no personal liability with reference to the transaction set forth in the complaint. The first separate defense pleads an accord and satisfaction by reason of the contents of article 12 of the contract of March 26, 1920, which gave accord and satisfaction to the appellee of all actions, suits, expenses, and other charges and obligations of the Fleet Corporation prior to that date. The issues were submitted to a special master, who held the first separate defense good and overruled the fourth separate defense. The District Court, on exceptions filed to the master's report, sustained the fourth separate defense and dismissed the bill.

The urgent deficiency bill of June 15, 1917 (40 Stat. 182), authorized the construction of ships not to exceed $500,000,000, and empowered the President to place orders therefor and to exercise the powers conferred through such agency or agencies as he might determine. By Executive order of July 11, 1917, the President delegated to the Fleet Corporation the powers thus conferred, in so far as they were applicable to the construction of vessels, and by the further order of December 3, 1918, confirmed such delegation and all acts theretofore done thereunder. By virtue of this authority, the Fleet Corporation, in its name as principal, made three contracts at different times prior to March 26, 1920, with the Groton Iron Works. These contracts referred to the Fleet Corporation as the owner, for whom the vessels were to be constructed, and drew a distinction between the owner (Fleet Corporation) and the United States. The contracts forbade assignment, except upon consent of the Fleet Corporation as owner, but permitted the assignment of payments due or to become due thereunder for the purpose of obtaining credit in furthering their execution. The Fleet Corporation is referred to as a corporation organized under the laws of the District of Columbia, representing the United States of America, party of the second part.

It had been now authoritatively settled that, although in making such contracts the Fleet Corporation was exercising powers derived from the Executive orders issued pursuant to the urgent deficiency act for the purpose of carrying out its provisions, it is a principal and responsible as such. Sloan Shipyards Corp. v. United States, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762; United States v. Strang, 254 U. S. 491, 41 S. Ct. 165, 65 L. Ed. 368; Dietrich v. Fleet Corp., 9 F. (2d) 783 (2d C. C. A.); Providence Eng. Corp. v. Downey Shipbuilding Corp. (C. C. A.) 294 F. 641. The contracts made were similar to those in the Astoria cases, one of the cases considered

with the Sloan case in 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762. There, as here, the corporation was designated as owner. The undertakings of the contractor in turn ran to the owner, the Fleet Corporation, and not to the United States, and the distinction was made between the Fleet Corporation and the United States. As in the Astoria case contract, the distinction between the Fleet Corporation and the United States is marked.

A supplementary contract was entered into June 15, 1917, canceling the construction of 4 of the 12 ships covered by the first construction contract, and modified the terms on which the remaining eight were to be built. The Fleet Corporation contracted in the same capacity. No reference is made therein to the United States, and the Fleet Corporation is designated as the owner. It is the owner who is released from all obligations to pay the damages due to cancellation of the construction of the other ships
550 which were to be built. The contract of March 26, 1920, was supplemented to the preceding contracts and modified the rights and obligations of the parties. It again referred to the United States Shipping Board Emergency Fleet Corporation as a separate corporation organized under the laws of the District of Columbia, representing and acting in respect to all matters therein on behalf of the United States of America. It recited that the contractor had been engaged in constructing vessels for the owner, and that the owner was willing to modify the contract, and provided, among other things, that, for the considerations named, the owner should be released from all existing obligations under preexisting contracts, and the contractor should be bound by all valid existing obligations of the then receivers of the contractor to the owner, and that, as against the payment to be made under this settlement contract, the owner should be credited with all payments theretofore made, and forthwith be credited with all proper credits therefor accrued upon preexisting contract. The contracts were plainly between the Groton Iron Works, as one party, and the Fleet Corporation, as the other. The obligations of the owner released by this settlement contract were the obligations of the Fleet Corporation arising under the contracts, and the payments theretofore made by the owner, for which it was to receive credit, were the payments made under the settlement contracts and were payments made by the Fleet Corporation under existing contracts. The purpose of this contract was to modify the previously existing contracts made by the Fleet Corporation as principal, to discharge the Fleet Corporation and the contractor from certain obligations credited thereto, and to create others in their place. And as such it was executed in

the same capacity as were the contracts thus modified and to which it was supplemental.

As decided in the Sloan case, this contract was that of the Fleet Corporation, executed by it as principal, and it was not a contract of the United States in its governmental capacity. The theory that the Fleet Corporation was acting as agent for an undisclosed principal is disposed of by the authorities to which we have referred. The cases of Hodgson v. Dexter, 1 Cranch 345, 2 L. Ed. 130, and Parks v. Ross, 11 How. 362, 13 L. Ed. 730, to which we are referred by the appellee, do not establish that a public agent may not be personally liable for a contract made by him on account of the Government, but only that a presumption arises that a public official contracting in behalf of the Government does not intend to bind himself personally. An agent may so contract as to become personally bound. Whitney v. Wyman, 101 U. S. 392, 25 L. Ed. 1050; Thos. Gordon Malting Co. v. Bartels Brewing Co., 206 N. Y. 528, 537, 100 N. E. 457, 461; Steamship Co. v. Merchants' Transp. Co., 135 Mass. 421. Whatever presumption may arise from the fact that the Fleet Corporation was acting as a governmental agency, it was overcome by the contracts entered into, similar in terms and containing the same characteristics, which were considered in the Sloan case, supra.

In Fleet Corporation v. Western Union Tel. Co., 275 U. S. 415, 48 S. Ct. 198, 72 L. Ed. 345, which arose under the post roads act, the act providing that, in consideration of privileges of value accruing thereunder, a telegraph company accepting its provisions, "that telegraphic communications between the several departments of the Government of the United States and their officers and agents * * * shall be sent at rates to be annually fixed by the Postmaster General," was obliged to give the privileged rates to the Fleet Corporation. The court pointed out that for 55 years the Government rate had been extended to governmental agencies not technically departments of the Government. It was an entirely different question than that here for decision as to the liability of the Fleet Corporation upon its own contracts entered into as principal. In United States v. Brown, 247 N. Y. 211, 160 N. E. 13, it was held that, since the moving papers in support of an attachment alleged that the United States was the principal and the real party in interest, the allegations must be assumed to be true on a motion to vacate the attachment. The court below erred in sustaining the fourth defense.

But it is urged that the United States is a necessary party. The case of Providence Eng. Corp. v. Downey Shipbuilding Corp. (C. C. A.), 294 F. 641, considered this question, and upon the satisfactory reasoning of that case we think this contention without merit. The

cause of action asserted here is against the Fleet Corporation, because it undertook as principal the obligations of the contracts in suit. The accounting sought by the bill is as to the amount of payments made by the Fleet Corporation under the contract, particularly as to the amounts paid to receivers of the Groton Iron Works while
551 they were in possession of the Shipping Board. While the moneys were originally public moneys, they were turned over to the Fleet Corporation, to be expended as other moneys of the corporation were expended under the deficiency fund provision of the act of June 15, 1917 (40 Stat. 182).

The supplemental contract of March 26, 1920, released the parties from the obligations and claims prior thereto. The master was sustained by the court below in holding there was an accord and satisfaction, and in his conclusion that the settlement was held free from fraud and misrepresentation. This finding, based upon contradictory evidence, depending upon the credibility of witnesses, is sufficiently supported by credible testimony, and as such we accept it. Davis v. Schwartz, 155 U. S. 631, 15 S. Ct. 237, 39 L. Ed. 289, Adamson v. Gilliland, 242 U. S. 350, 37 S. Ct. 169, 61 L. Ed. 356. There was no duress nor mistake of fact. Although the parties had been in controversy since April, 1920, there was no suit for rescission of the contract until this bill was filed in July, 1923. The accord and satisfaction is based upon a sufficient consideration given by the respective parties. Since the agreement of release is under seal, it is binding, even if without consideration. Cairo, Truman & So. Ry. v. United States, 267 U. S. 350, 351, 45 S. Ct. 247, 69 L. Ed. 651. The contract recited that its principal purpose was to lift the receivership, restore the plant to the Groton Iron Works, and permit it to continue ship construction and operation of the plant. This was done. The mortgage was extended, and the price of ships was increased. The master found that the appellee paid $250,000 to the creditors of the Groton Iron Works and met pay-roll requirements of $100,000 more, as well as various bills for materials. The work of building the ships was not abandoned, but continued.

The contract was in part executed and in part remained executory, and the parties could, by subsequent agreement, modify the part remaining executory, and did not thereby affect the release as to past transactions contained in the contract. Savage Arms v. United States, 266 U. S. 217, 220, 45 S. Ct. 30, 69 L. Ed. 253. But it is urged that a cancellation may be granted. It can not, if the appellee has given up valuable considerations, which may not now be restored to it. It gave up the continuance of the receivership and expended large sums of money and relinquished claims against the Groton Iron Works for alleged delay in delivering ships completed before

March 26, 1920. One seeking relief by rescission or reformation must do so promptly on discovery of the mistake and must restore the former status. This the appellants have not done before suit and are unable to do.

Therefore the contract of March 26, 1920, is binding as a release of claims and obligations existing prior to that date. The parties are, however, bound by the terms of the contract, and as to it there should be an accounting between them. There are various claims which should be referred back by the court below, with instructions to have the master pass upon them and report his conclusions to the District Court.

Topping Bros. asked for leave to intervene on behalf of itself and other creditors of the Groton Iron Works similar situated. This petition was denied. The petition was based upon the claim that the Groton Iron Works and the Fleet Corporation, in the execution and administration of the accord and satisfaction of March 26, 1920, committed a violation of their rights as creditors, and that misrepresentations were made to these creditors which induced them to terminate the State court receivership of the Groton Iron Works, which existed at the time the contract of March 26, 1920, was made. We have held that the contract was free from fraud or misrepresentation and was freely entered into by the parties. Topping Bros. did assent thereto and lifted the receivership of the Groton Iron Works, which permitted the making of such contract. But, since its indebtedness had not been paid, it is still a creditor whose interest, with other creditors, is protected by the trustee in bankruptcy, who represents all creditors. A creditor is not a proper party plaintiff to a suit by the debtor or its trustee in bankruptcy. Atlantic Trust Co. v. Dana et al. (C. C. A.), 128 F. 209, 222. If the object of intervention by petitioners is to assert a new cause of action, any fraud or misrepresentation in causing them to consent to the lifting of a receivership is not available to the trustee in bankruptcy for damages accorded to them for such a wrong, and does not belong to the other creditors. It is an independent claim arising through alleged fraud or misrepresentation. To permit it to make this claim now would be a misjoinder of causes of action, and this is not permitted. Equity rule 37. Hutchinson v. Philadelphia & G. S. S. Co. (D. C.), 216 F. 795.

Decree reversed.

552 In United States Circuit Court of Appeals,
Second Circuit

P. LEROY HARWOOD, AS TRUSTEE, ETC., PLAINTIFF-APPELLANT

v.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
defendant-appellee

ISAAC SIEGEL AND JOHN M. P. THATCHER, AS RECEIVERS, ETC.,
defendants-appellants

Decree

Filed May 13, 1929

Appeal from the District Court of the United States for the Dis
trict of Connecticut.

This cause came on to be heard on the transcript of record from
the District Court of the United States for the District of Con
necticut, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, an
decreed that the decree of said District Court be and it hereby i
reversed with costs.

It is further ordered that a mandate issue to the said District
Court in accordance with this decree.

WM. PARKIN, *Clerk*.

553 [File indorsement omitted.]

554 In United States Circuit Court of Appeals

[Title omitted.]

Petition of defendant-appellee for rehearing

Comes now the appellee, United States Shipping Board Emer
gency Fleet Corporation, by its counsel, and, an opinion having
555 been filed herein May 6, 1929, presents this, its petition for
rehearing, upon the question of its personal liability under
the contract in suit (dated March 26, 1920, Exhibit 5, trans. p
118–134), and for reasons therefor respectfully alleges:

1. The court's attention appears not to have been clearly called
to the differences between the Astoria case (Sloan Shipyards v. Fle
Corporation, 258 U. S. 549) and the case at bar, not apparent in t

opinion of Mr. Justice Holmes, but clearly appearing in the record of the case in the court below and on inspection of the contract in that case.

2. The Astoria contract describes the Astoria Company as the borrower and the Fleet Corporation as the corporation. The Fleet Corporation is merely described as "representing the United States of America," whereas in the case at bar the contract, Exhibit 5, the only contract now in question, in view of this court having sustained it as a settlement of the preceding contracts, it is specifically stated that the Fleet Corporation is "representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America," and therefore not liable unless its authority is disproved or its specific agreement to be bound equally with its principal is clearly shown.

3. The Astoria contract provided that the borrower should construct on its own land as its own property a marine railway and repair plant, to be operated by the borrower as a private business, in consideration of which the Fleet Corporation would make certain loans to the borrower. This was not pursuant to the President's delegated powers, nor was the United States directly interested nor can we find clear statutory authority for the Fleet Corporation to bind the United States to make such a loan. In the case at
536 bar the contract was to adjust controversies arising out of the building of ships for the United States, which the evidence shows to have been the owner regardless of the use of the word owner as a descriptive word in the contract; to adjust claims arising out of cancellations effected only by the exercise of governmental powers; to revise prices to be paid by the United States through the Fleet Corporation for ships of the United States; to release the United States and the Fleet Corporation from all claims and demands arising out of the construction of ships for the United States; and the cancellation of contracts therefor.

Wherefore your petitioner prays this honorable court to grant a rehearing and to withhold the issue of the mandate herein until the expiration of fifteen days after decision upon this petition.

May 20, 1929.

JOHN BUCKLEY,
United States Attorney for the District of Connecticut.
CHAUNCEY G. PARKER,
General Counsel.
HENRY F. PARMELEE,
Of Counsel.

The undersigned, of counsel for the petitioner, hereby cert that in his opinion the above petition for rehearing is well fou in law and that it is not filed for purposes of delay.

HENRY F. PARMELE

557 In United States Circuit Court of Appeals

[Title omitted.]

Order denying rehearing

Filed May 28, 1929

A petition for a rehearing having been filed herein by co for the appellee,

Upon consideration thereof it is

Ordered that said petition be and hereby is denied.

WM. PARKIN, *Clerk*

558 [File indorsement omitted.]

559 [Clerk's certificate to foregoing transcript omitted printing.]

560 Supreme Court of the United States

Order allowing certiorari

Filed October 21, 1929

The petition herein for a writ of certiorari to the United Stat Circuit Court of Appeals for the Second Circuit is granted. And is further ordered that the duly certified copy of the transcript the proceedings below which accompanied the petition shall treated as though filed in response to such writ.

[Indorsement on cover:] File No. 34476. U. S. Circuit Co of Appeals, Second Circuit. Term No. 345. United States Shipp Board Merchant Fleet Corporation, sued in the name of the Uni States Shipping Board Emergency Fleet Corporation, petitio vs. P. LeRoy Harwood, as trustee in bankruptcy of Groton I Works, and Isaac Siegel and John M. P. Thatcher, as ancillary ceivers of United States Steamship Co., intervenors. Petition writ of certiorari and exhibit thereto. Filed August 27, 1929. No. 34476.

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No. 345

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, SUED IN THE NAME OF THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

v.

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY OF GROTON IRON WORKS

AND

ISAAC SIEGEL AND JOHN M. P. THATCHER, AS ANCILLARY RECEIVERS OF UNITED STATES STEAMSHIP CO., INTERVENORS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. ———

UNITED STATES SHIPPING BOARD MERCHANT FLEET Corporation, sued in the name of the United States Shipping Board Emergency Fleet Corporation, petitioner

v.

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY of Groton Iron Works

and

ISAAC SIEGEL AND JOHN M. P. THATCHER, AS ANCILLARY Receivers of United States Steamship Company, intervenors

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF

PETITION

The Solicitor General, on behalf of the United States Shipping Board Merchant Fleet Corporation, (formerly United States Shipping Board

Emergency Fleet Corporation), prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Second Circuit entered in the above case May 13, 1929, (on which rehearing was denied May 28, 1929), reversing a decree of the United States District Court for the District of Connecticut.

STATEMENT

During the war emergency the Fleet Corporation, on June 15, 1917, entered into a contract with Groton Iron Works, a Maine corporation, by which the latter agreed to construct twelve wooden hulls. (R. 58.) This contract was modified by a supplemental contract, dated September 30, 1918, which provided that only eight of said twelve wooden hulls should be constructed. (R. 69.) On August 11, 1917, the Fleet Corporation executed another contract with Groton for six steel ships, (R. 76), and on April 20, 1918, another contract for six more steel ships. (R. 93.) After the armistice construction of three of the steel ships was suspended by order of the Fleet Corporation. (R. 33, 141.) These transactions of the Fleet Corporation arose out of the exercise of powers conferred upon it in several different ways. (See pp. 14–18, *infra*.)

In March, 1919, Groton had become involved in financial difficulties and receivers were appointed by the State court, who continued to operate the plants and carry on construction work on the contracts above mentioned. (R. 170–171.) While the

receivers were in charge, those interested in Groton, including Charles W. Morse and his sons, endeavored to have the receivership lifted; and several conferences were held between the representatives of the parties, in the course of which the Morses represented that if the Fleet Corporation would extend certain further financial aid Groton would be able to take care of the further financing necessary to complete the unfinished contracts. (R. 170, 172.) From time to time the Fleet Corporation had loaned large sums of money to Groton, secured by mortgages on the shipbuilder's plants, which loans aggregated $1,800,000, plus interest, in March, 1920. (R. 121.) These negotiations culminated in the execution, on March 26, 1920, of a new contract between "Groton Iron Works, party of the first part," and the Fleet Corporation, described as "representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America, (hereinafter referred to as the Owner), party of the second part." (R. 118.) This contract shows on its face that the Government, acting through the Fleet Corporation, was attempting to settle all matters then in controversy arising out of the several contracts and their partial suspension. The contract recited that its principal purpose was to lift the receivership, restore the plant to Groton, and permit it to continue ship construction and operation of the plant. (R. 120.) By the terms of this contract the mortgage was extended and the price of ships was increased.

(R. 121–123.) In compliance with its terms, the Fleet Corporation thereafter advanced $250,000 to the receivers to pay Groton's creditors and met pay-roll requirements of $100,000 more, as well as various bills for materials. (R. 172–173, 552.) The work of building the ships was continued. (R. 552.)

A short time afterwards Groton became unable to proceed with the construction, the receivership was continued, and eventually Groton was adjudged a bankrupt. (R. 24.)

The present litigation was instituted against the Fleet Corporation by Groton in February, 1921, (before the bankruptcy adjudication), as an action at law in the Superior Court of Connecticut, to recover $13,000,000 damages because of the suspension of construction of some of the ships and because of alleged breaches of the three shipbuilding contracts. (R. 1.) The case was removed to the United States District Court, where, upon stipulation, it was transferred to the equity side, and respondent Harwood, as Trustee in Bankruptcy, was substituted as plaintiff. (R. 22–24.) A new bill of complaint was filed by Harwood, setting forth practically the same claims which were in the original complaint at law, but praying for an accounting, for a decree setting aside the settlement contract of March 26, 1920, on the ground of duress and fraud, and for a money judgment. (R. 24, 57, 58.) Respondents Siegel and Thatcher intervened as Ancillary Receivers of United States Steamship Company, a corporation

which owned all the capital stock of Groton. (R. 157.)

Petitioner's answer denied all the allegations of the bill of complaint as to breaches of the contracts, duress, and fraud, and alleged that Groton had been overpaid to the extent of at least $5,000,000. (R. 135.) As a first separate defense, petitioner alleged that by virtue of the contract of March 26, 1920, Groton had compromised and settled all matters in controversy which had arisen prior thereto. (R. 145.) As a fourth separate defense, petitioner alleged that with respect to each and all of the transactions set forth in the bill, petitioner was acting solely as an agency of the United States under the powers delegated to petitioner by the President, pursuant to the Act of June 15, 1917, (c. 29, 40 Stat. 182); that petitioner had not assumed and was under no personal liability to plaintiff because of such transactions; and that plaintiff's sole remedy, if any, was by suit against the United States in the manner provided by law. (R. 148.)

On motion the court severed the special issues, (R. 155), and referred petitioner's first and fourth separate defenses to a Special Master to take testimony and report thereon, because a determination adverse to plaintiff on either issue might obviate taking any further testimony. (R. 152, 153, 155.)

The Special Master's report contained special findings of fact and conclusions of law. It sustained petitioner on every issue raised by the first defense and held that the rights of the parties were

fixed by the contract of March 26, 1920. (R. 161, 178.) As to the fourth defense, the Master concluded that petitioner had failed to prove by a preponderance of the evidence that petitioner was not the party with whom Groton contracted; that it had not contracted with the United States, and therefore found that issue in favor of plaintiff. (R. 178, 183–189). This conclusion was in large part dependent upon the Master's interpretation of the *Sloan* and *Astoria cases*, 258 U. S. 549, with which the District Court and other courts have since differed.

After hearing on exceptions of both parties to this report, the District Court handed down an opinion which sustained the Master's report as to the first defense, and sustained petitioner's exceptions to the Master's report on the fourth defense, on the ground that the evidence had established that—

> the Fleet Corporation was acting as agent of the United States in behalf of the United States, under the statutory powers granted to the President and by him delegated to the Fleet Corporation, to procure the construction of ships for the United States. The Fleet Corporation is, therefore, not liable.

Accordingly, a decree was entered dismissing the bill. (R. 504–513, 514.)

On appeal, the Circuit Court of Appeals sustained the first defense, but it reversed the District Court as to the fourth defense, and held that petitioner was personally bound by the March 26, 1920,

contract, and that the District Court erred in sustaining the defense asserted to the accounting. (R. 551.) This conclusion was based largely upon the authority of the *Sloan* and *Astoria cases*. (R. 549–551.)

A petition for rehearing was denied. (R. 555.)

Mandate having issued, the District Court has entered a decree reversing its former decree, and counsel for plaintiff have announced their intention to apply for an order to direct the Special Master to proceed with an accounting. (The facts stated in this paragraph do not appear in the record.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

I. In reversing the decree of the District Court as to the fourth defense.

II. In holding that the Fleet Corporation was personally bound by the contract of March 26, 1920, and subject to an accounting under that contract.

REASONS FOR GRANTING THE WRIT

This case is of general importance. The principle involved is one which is constantly arising; it is involved in several important cases which are now in the lower Federal courts, and the recent decisions of these courts on the point are in sharp conflict.

Since the decisions of this Court in the *Sloan* and *Astoria cases*, (258 U. S. 549), in 1922, there has been a widespread difference of opinion in the minds of the bench and bar as to the effect of those decisions. Some lawyers and some courts have inter-

preted them to mean that while the Fleet Corporation is suable, just as any other corporation or natural person is *suable* in the District Courts, it is not *liable* ex contractu in its private corporate capacity when it appears that the contract was made by it on behalf of the United States under the power and authority delegated to it by the President's Executive Orders, pursuant to the Emergency Shipping Fund provisions of the Act of June 15, 1917, and Acts amendatory thereof. District Judge Bean, (of the District of Oregon), in a carefully worded opinion so held in *Astoria Marine Iron Works* v. *Fleet Corportion,* 295 Fed. 415, a case where the plaintiff was the same and the wording of the contract was similar to that involved in the *Astoria* case which was before this Court. In *Fleet Corporation* v. *Galveston Drydock & Construction Company,* 13 F., (2d), 607, the Circuit Court of Appeals for the Fifth Circuit reversed a judgment against the Fleet Corporation for work done and material furnished on contracts made for ship repairs, when it appeared that the Fleet Corporation was acting as agent of the Shipping Board pursuant to the authority to repair and operate the Government's vessels, conferred on that Board by Section 12 of the Merchant Marine Act, 1920. This Court denied certiorari in this case, 273 U. S. 725. On the other hand, the Circuit Court of Appeals for the Second Circuit in this case and in other cases, (*Dietrich* v. *Fleet Corporation,* 9 F., (2d), 733; *Providence Eng. Corp.* v. *Downey,* 294 Fed. 641), has held that—

> although in making such contracts the Fleet Corporation was exercising powers derived from the Executive Orders issued pursuant to the urgent deficiency act for the purpose of carrying out its provisions, it is a principal and responsible as such. (R. 549.)

In the last-named case certiorari was denied, *sub. nom. Fleet Corporation* v. *Chase National Bank*, 264 U. S. 586.

Since the *Sloan* and *Astoria cases* were decided seven years ago, the exact question raised by the record here has not been presented to this Court "on answer and evidence," and it was suggested by the Chief Justice in the dissenting opinion in those cases that possibly the question raised in this present petition might properly arise only on answer and evidence. (258 U. S. 549, 572.) There have, however, been cases in which the liability of the Fleet Corporation has been considered. (See *U. S. ex rel. Skinner & Eddy Corporation* v. *McCarl*, 275 U. S. 1, and *Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415, 422.) In the latter this Court said that the Fleet Corporation "has never done any business, or conducted any operation, except on behalf of the United States."

We submit that the decision of the Circuit Court of Appeals erred in failing to apply the rule that a public agent, contracting within the scope of its authority on behalf of a disclosed principal, is not personally liable, (see *Hodgson* v. *Dexter*, 1 Cranch, 345; *Jones* v. *LeTombe*, 3 Dallas, 384; *Belknap* v. *Schild*, 161 U. S. 10, 17), and that it is contrary to

the applicable decisions of this Court and is untenable, unless this Court, by its opinion in the *Sloan* and *Astoria cases,* intended to overrule or modify the principles laid down in the cases cited immediately above.

In any event, the decision of the court below, if acquiesced in, would leave the subject in confusion.

Certiorari has been granted in the following cases now before this Court, which present the somewhat similar questions of liability of the Fleet Corporation for personal injuries and cargo losses occurring in the course of its operation of vessels since the passage of the Merchant Marine Act of June 5, 1920: *Johnson* v. *Fleet Corporation,* No. 5; *Fleet Corporation* v. *Lustgarten,* No. 32; *Federal Sugar Refining Co.* v. *United States,* No. 56.

Although it does not appear in the record, it is a fact that the United States, as plaintiff, is now seeking in the same United States District Court in which the instant case was brought to foreclose a mortgage on the plant of Groton executed by the latter to the Fleet Corporation prior to the settlement agreement of March 26, 1920, and to recover judgment on the notes secured thereby. These notes are for the aggregate sums of about $2,000,000, which were advanced by the Fleet Corporation as part of the transactions connected with the contracts mentioned above. This mortgage and these notes are now unquestionably the property of the United States. It is certain that the Government will be unable to satisfy the large deficiency judg-

ment against Groton which it will undoubtedly recover; and, unless the decision which the instant petition seeks to review is reversed, the Government will be unable to use this deficiency judgment in set-off or recoupment against the claims of Groton asserted in the instant litigation. It is also obvious that unless the decision of the Circuit Court of Appeals is now reviewed and reversed, there will be long, complicated, and expensive accounting proceedings before the Master.

There is also a case now pending in the United States District Court for the Eastern District of Pennsylvania wherein the Bethlehem Shipbuilding Company is suing the Fleet Corporation on similar contracts. This case has been consolidated with another action brought by the United States as plaintiff against the Bethlehem Shipbuilding Company on the same transactions. If this Court should review the case at bar, its opinion would tend to clarify and simplify the conflicting issues in the pending *Bethlehem cases,* which involve sums aggregating many millions of dollars.

Wherefore, it is respectfully submitted that the petition should be granted.

CHARLES E. HUGHES, JR.,
Solicitor General.

AUGUST, 1929.

BRIEF IN SUPPORT OF THE PETITION

OPINIONS BELOW

The opinion of the District Court, (R. 504–513), is reported in 26 F., (2d), 116. The opinion of the Circuit Court of Appeals, (R. 548–553), is reported in 32 F., (2d), 680.

JURISDICTION

The decree of the Circuit Court of Appeals for the Second Circuit was entered on May 13, 1929. (R. 553.) Petitioner filed a petition for rehearing which was denied by said Court on May 28, 1929. (R. 555.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A written agreement executed on March 26, 1920, between Groton Iron Works and the Fleet Corporation, "a corporation organized under the laws of the District of Columbia, representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America," adjusted all rights of the parties under several contracts previously entered into between June 15, 1917, and September 30, 1918, or provided a method for their adjustment. The earlier contracts provided for the construction of certain hulls and suspension of some of the construction. The contract of March 26, 1920, provided for the lifting of the receivership of Groton, for certain advances to Groton, and for certain cancellations, payments,

and accountings. The action of the Fleet Corporation in executing all of the contracts was authorized or ratified by various Executive Orders of the President pursuant to the Emergency Shipping Fund provisions of the Act of June 15, 1917, and other war emergency Acts amendatory thereof.

The sole question is, whether on these facts and the other facts appearing upon bill, answer, and proof the Fleet Corporation is personally liable for an accounting under the contract of March 26, 1920, in an equity suit in the District Court for the District of Connecticut.

STATUTES AND EXECUTIVE ORDERS INVOLVED

Shipping Act, 1916, c. 451, 39 St. 728. The pertinent sections are Sections 5, 7, 11, and 13.

Urgent Deficiency Act, approved June 15, 1917, c. 29, 40 Stat. 182. The pertinent sections are the Emergency Shipping Fund provisions; also Section 3 of the Act. The *Executive Orders* issued by the President on July 11, 1917, and December 3, 1918, are also pertinent.

Merchant Marine Act, 1920, approved June 5, 1920, c. 250, 41 Stat. 988. The pertinent sections are Sections 2, 4, and 12.

The portions of the Acts and Executive Orders above mentioned are set forth in the Appendix to this brief, pp. 34 et seq., *infra.*

DISCUSSION OF STATUTES AND EXECUTIVE ORDERS INVOLVED

In addition to the facts set forth in the foregoing petition, (pp. 2–7, *supra*), there is a background

of events necessary to a clear understanding of this controversy.

Although the Shipping Act of 1916, which created the Shipping Board as a Federal commission and authorized the Board to form one or more corporations with a capital stock of Fifty Million Dollars to carry out the public purposes of that Act, was enacted by Congress "in contemplation of the possibility of war," (*Skinner & Eddy Corporation* v. *McCarl*, 275 U. S. 1, 5), it is reasonable to assume that when the Act was passed Congress could not have anticipated the extraordinary functions and responsibilities that the national emergency subsequently imposed upon the Shipping Board and its creature, the Fleet Corporation. As soon as war was declared, on April 6, 1917, the demand for ships to transport our troops, supplies, and munitions overseas and to maintain our water-borne foreign commerce was of the greatest urgency. The Shipping Board, newly organized in January, 1917, had no funds to use for acquisition of ships, except the Fifty Million Dollars to be derived from the sale of Panama Canal bonds then held by the Treasury Department. But this sum was available only as capital stock for a corporation or corporations to be formed. (Secs. 11, 13, Shipping Act, 1916.) Accordingly, the Fleet Corporation was organized on April 16, 1917, ten days after war was declared, and immediately began executing contracts for the construction of ships.

It was then recognized, however, that further large appropriations must be made to meet the necessities of the emergency. An Urgent Deficiency Bill (H. R. 3971) was pending in the Senate and at the President's suggestion a Senate amendment was added which, after some changes, appears in the Act under the title "Emergency Shipping Fund." The measure was finally passed and approved on June 15, 1917. It gave broad powers to the President to acquire such ships, material, shipbuilding and transportation facilities as in his judgment the necessities of the Government might require; to modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships; and to expend $750,000,000 for such purposes. He was further authorized to exercise the power and authority so vested in him and expend the money therein and thereafter appropriated through such agency or agencies as he might determine from time to time. (40 Stat. 182, 183, pp. 38–40, *infra*.)

On July 11, 1917, the President, by Executive Order, delegated to the Fleet Corporation all the power and authority so vested in him to acquire ships by construction, purchase, requisition of ships in process of construction, or requisition of contracts therefor, and delegated to the Shipping Board all the power and authority so vested in him to take title or possession by purchase or requisition of constructed vessels, or parts thereof, or charters

therein, and to operate, manage, and dispose of such vessels and all other vessels acquired by the United States. (See pp. 40–41, *infra.*)

But in the meantime, while the Bill was being delayed and debated in Congress, the Executive Branch of the Government felt forced by the emergency to go ahead with the execution of contracts for war purposes. On May 28, 1917, the Bill being before the House, Chairman Fitzgerald, of the Appropriations Committee, said, (Vol. 55, Part 3, p. 3014, Cong. Rec.):

> * * * I do not believe we would be justified in holding up this appropriation bill carrying more than $3,000,000,000 in view of the fact that expenditures are being made without authority and that the passing of this bill is very much needed.

Representative Gillett (now Senator) said, (p. 3020):

> We ought to act at once. Commitments and contracts and expenses are being made now without legal authority, but with faith that Congress will excuse and ratify them because of the great emergency, and we ought as speedily as possible end that condition by appropriating the necessary money. And so representing the minority of the committee, I urge that this bill be at once sent to conference.

It thus appears that Congress knew that in the emergency the departments and agencies of the Government were rushing war preparations and

committing the Government in advance of receiving authority so to do. Recognizing this situation, the following provision was added to the Act of June 15, 1917:

> The appropriations contained herein shall be available for the payment of obligations on account of the existing emergency incurred prior to the passage of this Act and which are properly chargeable to such appropriations. (Sec. 3, c. 29, 40 Stat. 217, quoted on p. 40, *infra.*)

This retroactive provision was in effect ratification of the contract with Groton which was executed on June 15, 1917, (the date the Act was approved but prior to the delegation of authority by the President), because in further discussion of the contracts for ships then being made, Chairman Fitzgerald said (Vol. 55, Part 3, p. 3018, Cong. Rec.):

> All I have to say about the contracts is that the best equipped man in the United States, General Goethals, makes them in behalf of the United States Government.

General Goethals was then General Manager of the Fleet Corporation.

The opinion of this Court in *Skinner & Eddy Corp.* v. *McCarl,* 275 U. S. 1, *supra,* contains an exhaustive review of the legislation and executive orders under which the Fleet Corporation was created and has functioned, and in the course of the opinion Mr. Justice Brandeis pointed out (p. 9)

that the transactions of the Fleet Corporation arose out of powers conferred upon it in several different ways, for besides powers conferred by the general corporation laws of the District of Columbia the Fleet Corporation was vested, by delegation from the President, with powers conferred upon him by the Act of June 15, 1917, (40 Stat. 182), and later amendatory Acts, passed during the war emergency.

Thus, the Fleet Corporation differs from the numerous other Government-owned private corporations employed by the United States as instrumentalities in various fields, because it not only had power to function as an agency of the Shipping Board within the scope of its charter powers as they were limited by the restrictive provisions of Sections 5, 7, and 11 of the Shipping Act, 1916, (39 Stat. 728, pp. 34–37, *infra*), and when so functioning to expend the Fifty Million Dollars provided for its capital stock, but also, by the Executive Order of July 11, 1917, and a later one on December 3, 1918, it was clothed with some of the enormous powers conferred on the President by the emergency legislation above mentioned, and was thereby intrusted with the expenditure of approximately three billion dollars, appropriated by Congress from time to time for expenditure by the President, to further the production of ships necessary for the national defense. (See pp. 40–43, *infra*.)

It is argued that support can be found for holding the Fleet Corporation liable in its corporate capacity as principal on the contract of March 26, 1920, in the provisions of the Act of June 15, 1917, quoted on pp. 38–40, *infra*. It has been argued that by the proviso as to the expenditure of money Congress intended that the money turned over to the Fleet Corporation should become corporate money, and hence that Congress intended the Fleet Corporation to be liable on all its contracts. But when all of the provisions of the Act are considered it seems plain that Congress did not contemplate turning over to the Fleet Corporation enormous sums then and thereafter appropriated in the manner in which a holder of all the stock in a corporation might contribute to the corporation's assets, but, on the contrary, that it intended that the money and the ships and the materials which the money might purchase should belong to the United States.

What Congress intended to do was to enable the Fleet Corporation to make contracts free from all the hampering conditions, delays, and "red tape" with which Congress has by various statutes safeguarded the disbursement of public funds. Congress intentionally and expressly waived all of the statutory restrictions surrounding the making of Government contracts which it had deemed necessary in times of peace, so that the President's delegated agent would have a free hand to contract for

the Government without hindrance and delay. While this provision was under discussion in the Senate, Senator Underwood, who was in charge of the bill, said that General Goethals desired "that his hands might not be tied in any way by technicalities." (Vol. 55, Part 4, p. 3549, Cong. Rec.) However, this waiver of statutory conditions intended for the protection of public funds did not make the Fleet Corporation's contracts any less Government contracts.

At that time the Fleet Corporation was not carrying on any private corporate activity or expending its funds for any private purpose. The Fleet Corporation could not lawfully engage in any private corporate enterprise and, as a matter of fact, did not attempt at any time to engage in any private corporate business. *Fleet Corp.* v. *Western Union Telegraph Co.*, 275 U. S. 415.

Section 11 of the Shipping Act, 1916, (39 St. 731), authorized the Shipping Board to form a corporation "to carry out the purposes of this Act." The purposes of the Act are all public in their nature. (See Title of Act.) The moving cause of the creation of the Fleet Corporation was to aid the Government in the purpose which Congress considered to be a public need. The public purposes the Board could carry out through the Fleet Corporation are found in Section 11, pp. 35–37, *infra*. They were the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States; but the Board and

the Corporation could not operate any vessel unless no private citizen could be found to operate it, and unless the President approved operation by the Corporation. When the President did authorize operation of ships in commerce, his authorization was to the Shipping Board. (See Ex. Order, July 11, 1917, p. 41, *infra.*)

It seems clear from the foregoing that the Fleet Corporation could not lawfully have engaged in any private corporate enterprise and could not have made any private corporate contracts when the Act of June 15, 1917, was passed. The only money it possessed and the only money it could spend was the $50,000,000 transferred from the United States Treasury for its capital stock. On May 18, 1917, twenty-eight days before the first contract with Groton was executed, the Emergency Shipping Fund provisions being before the Senate, Senator Smoot said:

> Mr. President, contracts which have been made up to date by General Goethals are for 214,000 tons, and that was to be paid for out of the $50,000,000 appropriated to the Shipping Board for the purchasing of ships. Mr. Denman, the Chairman of the Board, has contracted for 72,000 tons, to be paid out of the same appropriation, making up to date, contracted for by both, 286,000 tons. General Goethals said it was impossible for him to make any further contracts until there was another appropriation made, although he has arrangements made to enter into con-

> tracts to carry out the program of the 3,000,000 tons * * *. (Vol. 55, Part 3, p. 2519, Cong. Rec.)

Moreover, the Shipping Act, 1916, provided in Section 13:

> The proceeds of such bonds and the net proceeds of all sales, charters, and leases of vessels and of sales of stock made by the board, and all other moneys received by it from any source, shall be covered into the Treasury to the credit of the board, and are hereby permanently appropriated for the purpose of carrying out the provisions of sections five and eleven.

The bonds referred to were the Panama Canal bonds; the stock referred to was the stock that might then have been sold to private parties (but none of it was so sold); the sales, charters, and leases of vessels, were those that the Board might make through the Fleet Corporation; so that all the money the Corporation might receive was definitely tagged as funds of the United States.

Under such circumstances and existing law, it seems clear that the "proviso" in the Emergency Shipping Fund provisions meant no more than a waiver of statutory restrictions surrounding the execution of Government contracts. It gave the Fleet Corporation no different status as a Government agent than it gave the Shipping Board or the Secretary of the Navy, to both of whom the President delegated some of his authority under the Act of June 15, 1917.

ARGUMENT

I

THE PERSONAL LIABILITY OF PETITIONER IN THIS CASE MUST BE DETERMINED BY THE SETTLEMENT CONTRACT OF MARCH 26, 1920, AND THE SURROUNDING FACTS AND CIRCUMSTANCES; AND IN MAKING THAT CONTRACT THE FLEET CORPORATION WAS ACTING AS AGENT OF THE UNITED STATES IN BEHALF OF THE UNITED STATES

As pointed out in the Statement, p. 2, *supra*, the contract for twelve wood hulls was executed on June 15, 1917, prior to the President's Executive Order of July 11, 1917. (R. 58.) The contract for six steel hulls was dated August 11, 1917. (R. 76.) On April 20, 1918, a contract was made for six more steel hulls. (R. 93.) On the face of the first two contracts, executed in 1917, the Fleet Corporation appears as one of the principal contracting parties, without any disclosure of a principal, but in the contract of April 20, 1918, the Fleet Corporation describes itself as "representing the United States of America," which would seem to have been sufficient notice to Groton that it was dealing with a public agent. Moreover, the original wood-hull contract was modified and changed by a "Supplementary Contract," dated September 30, 1918, (erroneously stated by the Circuit Court of Appeals as dated June 15, 1917). (R. 550.) In this "Supplementary Contract" the Fleet Corporation is described as "representing the United States of America." (R. 69.)

The Special Master, (R. 178), the District Court, (R. 504), and the Circuit Court of Appeals, (R. 552), all concurred in holding that the settlement contract of March 26, 1920, is binding as a release of all claims and obligations arising out of the earlier contracts. Consequently, it is clear that the personal liability, if any, of the Fleet Corporation must be gauged by the provisions of the contract of March 26, 1920, irrespective of any personal liability this agent may have incurred in executing the previous contracts.

The opinion of the Circuit Court of Appeals asserts that "the contracts made were similar to those in the *Astoria case,*" where "the distinction between the Fleet Corporation and the United States is marked." Even if the similarity be conceded, it should not be determinative of the issues in this case, as the Circuit Court of Appeals apparently held.

We submit that the whole frame and tenor of the contract of March 26, 1920, justifies the conclusion in regard to its effect reached by the District Court, (R. 506), rather than the conclusion reached by the Circuit Court of Appeals. (R. 549–551.) There is no evidence in the record even suggesting that Groton relied upon the faith and credit of the Fleet Corporation as principal in executing the contract, or was misled by the references to the Fleet Corporation as "Owner," mentioned below. Groton was bound to know it was contracting with a public agent. The Acts of Congress and Execu-

tive Orders alone, without more, were notice to and binding upon that contractor. *Russell Motor Car Co.* v. *United States,* 261 U. S. 514, 523. But, in addition, the contract itself is explicit in stating that the Fleet Corporation was "representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America," (R. 118), and that the "Owner" is a "Governmental agency," (R. 125, bottom of page); and in the "Release," (Art. XII, R. 131), the Fleet Corporation is released "both in its corporate capacity and as representing the United States of America."

Moreover, some of the promises in the body of the contract, made by the "party of the second part," relate to matters entirely outside of the domain of the business the Fleet Corporation was authorized to transact under its charter powers and its functions as an agent of the Shipping Board under the Shipping Act, 1920. Thus, paragraph (e) of Article II (R. 122) allows the contractor $500,000 in settlement and adjustment of "all obligations of the *Owner* to the Contractor or to the Receivers, arising out of the suspension and cancellation of the three hulls, 10 to 12 inclusive, under Contract 225 S. C." Manifestly, the word "Owner," as here employed, must mean the United States, because under the Act of June 15, 1917, it is the United States that must pay just compensation upon cancellation of a contract pursuant to that Act. Article III (R. 124) deals entirely with

matters foreign to any lawful powers the Fleet Corporation could exercise in its private corporate capacity. The article provides for cancellation of three steel vessels and three wooden hulls, and awards just compensation to Groton Iron Works on account of the cancellations. A part of this just compensation is to be paid in kind—that is, by turning over to the Contractor a completed wooden ship, a wooden hull, and also certain materials "*furnished by the Owner.*" The "Owner" of the completed ship was the United States, because the Executive Order of July 11, 1917, so provides. It is the Shipping Board, and not the Fleet Corporation, that is therein directed to take title to, and operate, manage, and *dispose of* all constructed ships acquired under authority of the Act of June 15, 1917. (See p. 41, *infra.*) The "Owner" of the wooden hull and of the materials was also the United States, because Congress had so declared in the Sundry Civil Act, approved July 19, 1919, (c. 24, 41 Stat. 163, 181), which provided:

> Any material or plant, as defined under the emergency shipping fund provision of the Deficiency Appropriation Act approved June 15, 1917, acquired by the United States Shipping Board Emergency Fleet Corporation, may be disposed of as the President may direct.

By Executive Order dated August 11, 1919, the President delegated his power to dispose of these surplus materials to the United States Shipping Board and authorized that Board to sell or dispose

of such materials through the agency of the Fleet Corporation.

Throughout the contract there are frequent references to "the Owner" so phrased as to imply that the Fleet Corporation regarded and referred to itself as "the Owner." This confusion of identity and ownership can only be explained when it is remembered that up to the decision of this Court in the *Sloan-Astoria-Eastern Shore cases, (supra)*, the officials and attorneys of the Fleet Corporation asserted and consistently maintained that the Fleet Corporation was an integral arm and branch of the Government, similar to the Navy Department or any other executive department or bureau. However, we do not regard this mistaken impression as to its legal status, as exhibited by its references in this contract to itself as "Owner," to be determinative of its status under the contract.

Whether or not the Fleet Corporation was contracting as a principal and pledging its own personal credit is a question of law on all the facts. Certainly it is an established fact that the Fleet Corporation had complete and full authority as agent to execute this contract and to make the promises therein upon behalf of the United States. On the other hand, it did not have power to cancel contracts and award just compensation for such cancellations in its private corporate capacity. Nor did it have power to dispose of the ships and materials acquired by the President, except as an agent of the President or the Shipping Board. It

will not be presumed that it contracted in an unlawful manner and capacity, when it could lawfully contract in some other capacity.

II

A GOVERNMENTAL AGENCY IS NOT LIABLE ON A CONTRACT MADE BY IT IN BEHALF OF THE UNITED STATES

As the District Court found that the Fleet Corporation sustained the burden of showing that it made the contract in question solely as a governmental agency in behalf of the United States, it would seem that the decree of the District Court dismissing the suit should have been affirmed, on the application of this principle of law. *Hodgson* v. *Dexter*, 1 Cranch 345; *Parks* v. *Ross*, 11 How, 362, 374; *Sheets* v. *Selden's Lessee*, 2 Wall. 177, 187; *Belknap* v. *Schild*, 161 U. S. 10, 17.

We believe that there would have been an affirmance had it not been for the interpretation placed by the Circuit Court of Appeals on the decision of this Court in *Sloan-Astoria cases*, 258 U. S. 549. Apparently that court was of the opinion that there this Court held that the Fleet Corporation was not only *suable* but was also *liable* as principal even on contracts executed by it in behalf of the Government under its authority delegated to it.

If this interpretation is correct, then the Fleet Corporation as a governmental agent would seem to be *sui generis*—the only one of its kind—and different from all other kinds of agents the courts have had to deal with in the past.

We can not concede that the *Sloan-Astoria* decision should be so construed. It appears that the

only issue raised by the record in those two cases was whether the respective District Courts did or did not have jurisdiction, because of the immunity from suit claimed by the Fleet Corporation. In discussing the *Sloan case,* which was an action sounding in tort, the majority opinion points out that the Fleet Corporation, *by reason of its incorporation,* possessed an identity apart from that of the United States; that any person within the jurisdiction always is amenable to the law; and even though such person, either natural or artificial, is an instrumentality or agent of the Government for the highest ends, he does not cease to be answerable for his acts, merely because he is such agent. Hence the District Court had *jurisdiction* of the *Sloan* suit.

The same reasoning was applied to the *Astoria* suit, which was an action ex contractu. In discussing the provisions of the *Astoria* contract, Mr. Justice Holmes said, (p. 569): "The whole frame of the instrument seems to us plainly to recognize the Corporation as the immediate party to the contract." In employing this language we understand the Court intended to make clear the difference in identity between the agent that actually executed the contract and the United States, for the Fleet Corporation was then contending in effect that its identity had been merged in that of the Government of the United States and that it possessed the sovereign's immunity from suit. We do not understand this reference to the Fleet Corporation

as "the immediate party to the contract" as a holding that the Fleet Corporation was therefore *liable* as a principal, regardless of what the proof might show.

Our interpretation seems to be borne out by the next two sentences:

> The distinction between it and the United States is marked in the phrase last quoted. If we are right in this, further reasoning seems to us unnecessary to show that *there was jurisdiction of the suit.* (Italics ours.)

From the dissenting opinion filed by the Chief Justice, it appears that the minority of the Court placed the same interpretation on the decision as the one we are now suggesting. The Chief Justice said (p. 572):

> The opinion of the court is carefully drawn and if its conclusion is to rest merely on the nice distinction that it does not clearly appear from a proper construction of the pleadings that the acts here complained of were acts done under authority delegated by the President to the Fleet Corporation, as his agent, then the question I have been discussing and which seems to me to be in these cases is not here decided, and will only arise on answer and evidence.

Our understanding of the effect of the decision in the *Sloan-Astoria cases* is shared not only by the District Judge Thomas in the court below in the instant case (R. 510) but also by two other Federal courts in recent opinions.

In *Astoria Marine Iron Works* v. *Fleet Corporation*, 295 Fed. 415, where the same plaintiff was suing on a Fleet Corporation contract similar to the one that was before this Court, the Fleet Corporation filed an answer denying liability to plaintiff on the same grounds that are being asserted in this case in the Fourth Separate Defense. (R. 148.) Plaintiff demurred and moved to strike the answer. In overruling the demurrer and motion, District Judge Bean said (p. 418):

> Great reliance is placed by plaintiff on the decisions in the *Sloan Shipyards, supra,* and kindred cases; but as I read the opinions in these cases the question here presented, although urged upon the attention of the court, was deemed not to be within the record, and is not decided. Two of the cases were appeals from judgments sustaining demurrers to the complaints and dismissing the actions, on the ground that the Fleet Corporation was a mere bureau or arm of the Government and entitled to the immunity of the sovereign. The court ruled that it was a public business corporation, and liable to be sued for its torts or on its contracts the same as any other corporation, and therefore the complaints stated a cause of action; but the question of whether it is personally liable on contracts made by it as agent or representative of the President under the war powers conferred upon him was not decided.

In *Fleet Corp.* v. *Galveston Drydock & Const. Co.*, 13 F. (2d) 607 (certiorari denied, 273 U. S.

725), a judgment had been entered against the Fleet Corporation for certain repair work on a Shipping Board vessel on written orders given by the Fleet Corporation. On writ of error the Circuit Court of Appeals for the Fifth Circuit reversed and remanded. The court said (pp. 611, 612):

> We are of opinion that the language of the written instruments evidencing the contracts sued on, when that language is considered in the light of statutory provisions determining by whom the work and labor called for by those contracts may be authorized to be done, and in the light of the facts that the Fleet Corporation, acting in its own behalf as principal, was without authority to have that work done, but could legally act for the Shipping Board in having it done, requires the conclusion that the Fleet Corporation in making those contracts acted as the agent of the Shipping Board, and did not thereby obligate itself to pay for the material and labor called for by those contracts. Under the laws which were in force when those contracts were made, the Fleet Corporation could act in two entirely different capacities, as a private corporation carrying on business in its own name as a principal, and as the agent of the Shipping Board, an administrative branch of the Government. It has been settled that the Fleet Corporation is subject to suit and judgment against it on a contract made in its own name as principal in the conduct of a business in which it is authorized to engage. *Sloan Shipyards* v. *U. S. Fleet*

Corp., 258 U. S. 549; 42 S. Ct. 386; 66 L. Ed. 762.

It is equally well settled that an agent of the Government or of a branch thereof is not personally liable on a contract made on behalf of his principal while acting within the scope of his authority.

We submit that if the President himself had exercised the powers conferred upon him and had made the contract in question, he could not have been held personally liable, and that the Fleet Corporation, exercising in behalf of the Government the powers delegated by the President, should not be held personally liable.

CONCLUSION

We submit that, in view of the general importance of the question decided and the conflict in decisions of the Federal courts since the *Sloan-Astoria* decision by this Court, the writ of certiorari should be granted.

Respectfully submitted.

CHARLES E. HUGHES, Jr.,
Solicitor General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

CHAUNCEY G. PARKER,
General Counsel, Fleet Corporation,

O. P. M. BROWN,
Special Counsel, Fleet Corporation,
Of Counsel.

AUGUST, 1929.

APPENDIX

Shipping Act of 1916, c. 451, 39 Stat. 728, 730–732

SEC. 5. That the board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels: *Provided,* That neither the board nor any corporation formed under section eleven in which the United States is then a stockholder shall purchase, lease, or charter any vessel—

(a) Which is then engaged in the foreign or domestic commerce of the United States, unless it is about to be withdrawn from such commerce without any intention on the part of the owner to return it thereto within a reasonable time;

(b) Which is under the registry or flag of a foreign country which is then engaged in war;

(c) Which is not adapted, or can not by reasonable alterations and repairs be adapted, to the purposes specified in this section;

(d) Which, upon expert examination made under the direction of the board, a written report

of such examination being filed as a public record, is not without alteration or repair found to be at least seventy-five per centum as efficient as at the time it was originally put in commission as a seaworthy vessel.

* * * * *

SEC. 7. That the board, upon terms and conditions prescribed by it and approved by the President, may charter, lease, or sell to any person, a citizen of the United States, any vessel so purchased, constructed, or transferred.

* * * * *

SEC. 11. That the board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. The total capital stock thereof shall not exceed $50,000,000. The board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: *Provided,* That no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessel constructed, purchased, leased, chartered, or transferred under the authority of this Act unless the board shall be

unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board.

The board shall give public notice of the fact that vessels are offered and the terms and conditions upon which a contract will be made, and shall invite competitive offerings. In the event the board shall, after full compliance with the terms of this proviso, determine that it is unable to enter into a contract with such private parties for the purchase, lease, or charter of such vessel, it shall make a full report to the President, who shall examine such report, and if he shall approve the same he shall make an order declaring that the conditions have been found to exist which justify the operation of such vessel by a corporation formed under the provisions of this section.

At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved. The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the board. The board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms and, after payment of all debts and obligations, deposit the proceeds thereof in the Treasury to its credit. All stock in such corpora-

tions owned by others than the United States at the time of dissolution shall be taken over by the board at a fair and reasonable value and paid for with funds to the credit of the board. In case of disagreement, such value shall be determined in the manner provided in section ten.

* * * * *

SEC. 13. That for the purpose of carrying out the provisions of sections five and eleven no liability shall be incurred exceeding a total of $50,000,000, and the Secretary of the Treasury, upon the request of the board, approved by the President, shall from time to time issue and sell or use any of the bonds of the United States now available in the Treasury under the Acts of August fifth, nineteen hundred and nine, February fourth, nineteen hundred and ten, and March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed $50,000,000: *Provided*, That any bonds issued and sold or used under the provisions of this section may be made payable at such time within fifty years after issue as the Secretary of the Treasury may fix, instead of fifty years after the date of issue, as prescribed in the Act of August fifth, nineteen hundred and nine.

The proceeds of such bonds and the net proceeds of all sales, charters, and leases of vessels and of sales of stock made by the board, and all other moneys received by it from any source, shall be covered into the Treasury to the credit of the board, and are hereby permanently appropriated for the purpose of carrying out the provisions of sections five and eleven.

Urgent Deficiency Act of June 15, 1917, c. 29, 40 Stat. 182–183, 217

Emergency Shipping Fund

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind, and quantity usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States, any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over

all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities, or qualities of the ships or material so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material, or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money

herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: *Provided*, That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

* * * * *

SEC. 3. That the appropriations contained herein shall be available for the payment of obligations on account of the existing emergency incurred prior to the passage of this act and which are properly chargeable to such appropriations.

Executive Order, July 11, 1917

Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.

By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an act of Congress entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction,

whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management, and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

WOODROW WILSON.

THE WHITE HOUSE, *July 11, 1917.*

Executive Order, December 3, 1918

Delegating to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, powers granted to the President by Acts of Congress relative to the emergency shipping fund and approved on or prior to November 4, 1918.

Whereas by Executive order, No. 2664, dated July 11, 1917, I delegated to the United States Shipping Board and to the United States Shipping

Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved June 15, 1917; and

Whereas since the issuance of said Executive order the said powers granted in said act have been variously affected or extended by the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved October 6, 1917, by public act No. 138, 65th Congress, approved April 22, 1918, amending said section of said act of June 15, 1917, and by the sections entitled "Emergency shipping fund" in the sundry civil appropriation act approved July 1, 1918, and in the first deficiency appropriation act, 1919, approved November 4, 1918, respectively:

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said order No. 2664, but in no way limiting or restricting the effect thereof, or of acts heretofore done in pursuance thereof, I do hereby delegate all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive Order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways and piers, and to con-

structed vessels or parts thereof or charters therein; to the operation, management, and disposition of such dry docks, marine railways, piers, and vessels; and to such other matters as are not herein mentioned.

3. All acts heretofore done by said corporation or by said board, with reference, respectively, to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

WOODROW WILSON.

THE WHITE HOUSE, *December 3, 1918.*

Merchant Marine Act of 1920, c. 250, 41 Stat. 988, 990, 993

SEC. 2. (a) That the following Acts and parts of Acts are hereby repealed, subject to the limitations and exceptions hereinafter, in this Act, provided:

(1) The emergency shipping fund provisions of the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes," approved June 15, 1917, as amended by the Act entitled "An Act to amend the emergency shipping fund provisions of the Urgent Deficiency Appropriation Act, approved June 15, 1917, so as to empower the President, and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes," approved April 22, 1918, and as further amended by the Act entitled "An Act making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on

account of war expenses, and for other purposes," approved November 4, 1918;

(2) Section 3 of such Act of April 22, 1918;

(3) The paragraphs numbered 2 and 3 under the heading "Emergency shipping fund" in such act of November 4, 1918; and

(4) The Act entitled "An Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes," approved July 18, 1918.

(5) Sections 5, 7, and 8, Shipping Act, 1916.

(b) The repeal of such Acts or parts of Acts is subject to the following limitations:

(1) All contracts or agreements lawfully entered into before the passage of this Act under any such Act or part of Act shall be assumed and carried out by the United States Shipping Board, hereinafter called "the board."

(2) All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (c) of this section, as if this Act had not been passed.

(3) The repeal shall not have the effect of extinguishing any penalty incurred under such Acts or parts of Acts, but such Acts or parts of Acts shall remain in force for the purpose of sustaining a prosecution for enforcement of the penalty therein provided for the violation thereof.

(4) The board shall have full power and authority to complete or conclude any construction work begun in accordance with the provisions of

such Acts or parts of Acts if, in the opinion of the board, the completion or conclusion thereof is for the best interests of the United States.

(e) As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided*, That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed.

* * * * *

SEC. 4. That all vessels and other property or interests of whatsoever kind, including vessels or property in course of construction or contracted for, acquired by the President through any agencies whatsoever in pursuance of authority conferred by the Acts or parts of Acts repealed by section 2 of this Act, or in pursuance of the joint resolution entitled "Joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes," approved May 12, 1917, with the exception of vessels

and property, the use of which is, in the opinion of the President, required by any other branch of the Government service of the United States, are hereby transferred to the board: *Provided*, That all vessels in the military and naval service of the United States, including the vessels assigned to river and harbor work, inland waterways, or vessels for such needs in the course of construction or under contract by the War Department, shall be exempt from the provisions of this Act.

* * * * * *

SEC. 12. That all vessels may be reconditioned and kept in suitable repair, and until sold shall be managed and operated by the board or chartered or leased by it on such terms and conditions as the board shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act; and the United States Shipping Board Emergency Fleet Corporation shall continue in existence and have authority to operate vessels, unless otherwise directed by law, until all vessels are sold in accordance with the provisions of this Act, the provision in section 11 of the "Shipping Act, 1916," to the contrary notwithstanding.

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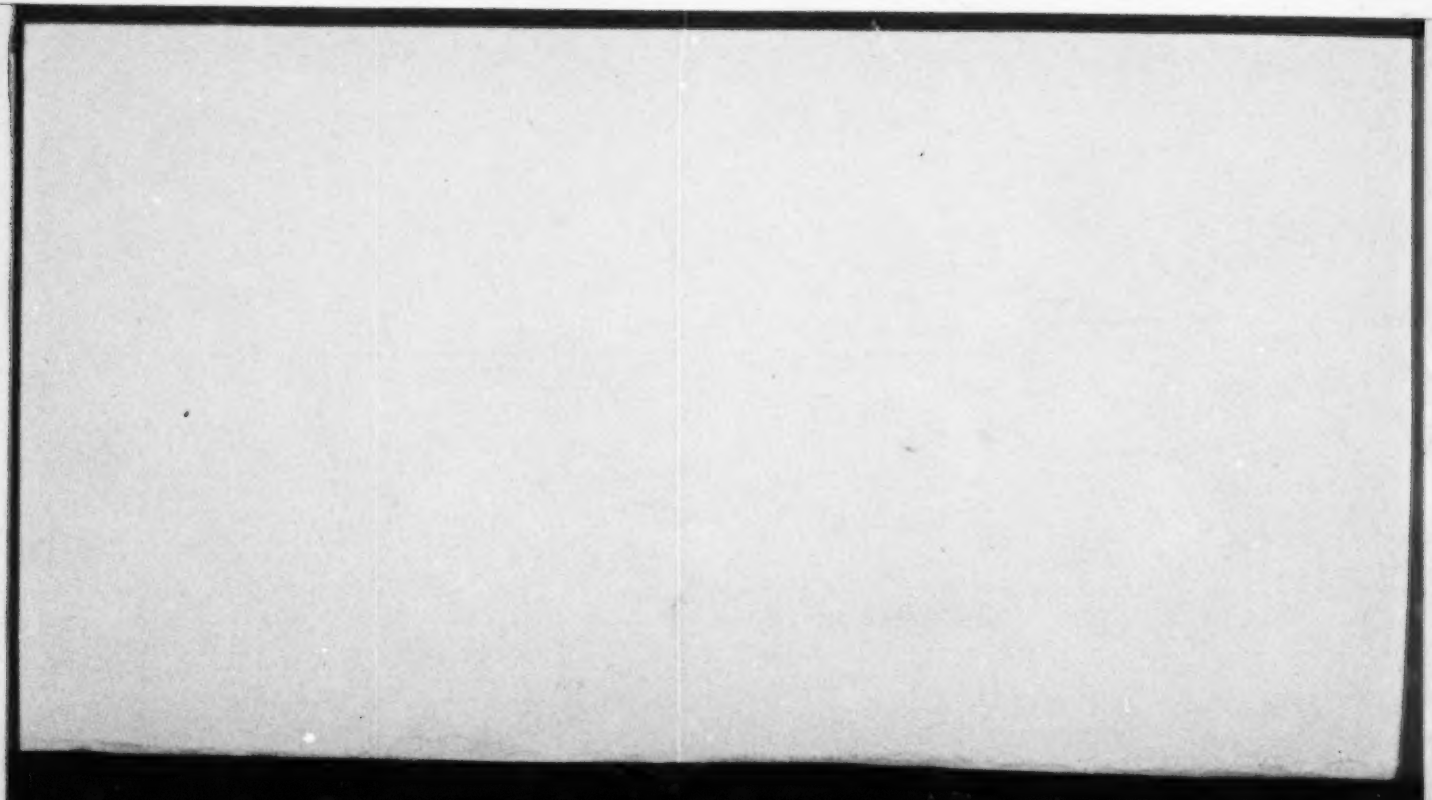

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No. 345

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, SUED IN THE NAME OF THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

v.

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY OF GROTON IRON WORKS, AND ISAAC SIEGEL AND JOHN M. P. THATCHER, AS ANCILLARY RECEIVERS OF UNITED STATES STEAMSHIP COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FLEET CORPORATION

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 345

UNITED STATES SHIPPING BOARD MERCHANT FLEET Corporation, sued in the name of United States Shipping Board Emergency Fleet Corporation, petitioner

v.

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY OF Groton Iron Works, and Isaac Siegel and John M. P. Thatcher as Ancillary Receivers of United States Steamship Company

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FLEET CORPORATION

OPINIONS BELOW

The opinion of the District Court (R. 312–318), is reported in 26 F. (2d) 116. The opinion of the Circuit Court of Appeals (R. 338–343) is reported in 32 F. (2d) 680.

JURISDICTION

The decree of the Circuit Court of Appeals for the Second Circuit was entered May 13, 1929 (R. 344), and rehearing was denied May 28, 1929 (R. 346). Petition for certiorari was filed August 27, 1929, and granted October 21, 1929. The juris-

diction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A written agreement executed on March 26, 1920, between Groton Iron Works and the Fleet Corporation, "a corporation organized under the laws of the District of Columbia, representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America," adjusted all rights of the parties under several contracts previously entered into between June 15, 1917, and September 30, 1918, or provided a method for their adjustment. The earlier contracts provided for the construction of certain hulls and suspension of some of the construction. The contract of March 26, 1920, provided for the lifting of the receivership of Groton, for certain advances to Groton, and for certain cancellations, payments, and accountings. The action of the Fleet Corporation in executing all of the contracts was authorized or ratified by various Executive Orders of the President pursuant to the Emergency Shipping Fund provisions of the Act of June 15, 1917, and other war emergency Acts amendatory thereof.

The sole question is, whether on these facts and the other facts appearing upon bill, answer, and proof the Fleet Corporation is personally liable for an accounting under the contract of March 26, 1920,

in an equity suit in the District Court for the District of Connecticut.

STATUTES AND EXECUTIVE ORDERS INVOLVED

Shipping Act, 1916, c. 451, 39 Stat. 728. The pertinent portions are Sections 5, 7, 11, and 13.

Urgent Deficiency Act, approved June 15, 1917, c. 29, 40 Stat. 182. The pertinent sections are the Emergency Shipping Fund provisions, and Section 3 of the Act. The Executive Orders issued by the President on July 11, 1917, and December 3, 1918, are also pertinent.

Sundry Civil Act, approved July 19, 1919, c. 24, 41 Stat. 163. The pertinent provision will be found under the title "Emergency Shipping Funds" on page 181, and is set out in the President's Executive Order of August 11, 1919, delegating the authority to dispose of property acquired by the Fleet Corporation.

Merchant Marine Act, approved June 5, 1920, c. 250, 41 Stat. 988. The pertinent portions are Sections 2, 4 and 12.

General Appropriation Act, approved June 12, 1922, c. 218, 42 Stat. 635, 647. The pertinent provision is found under the title "Emergency Shipping Fund."

The portions of the Acts and Executive Orders above mentioned are set forth in the Appendix to this brief, pp. 41-56, *infra*.

STATEMENT

On June 15, 1917, the Fleet Corporation entered into a contract with Groton Iron Works, a Maine corporation, by which the latter agreed to construct twelve wooden hulls at Noank, Connecticut. (R. 36.) This contract was modified by a supplemental contract, dated September 30, 1918, which provided that only eight of said twelve wooden hulls should be constructed. (R. 44.) On August 11, 1917, the Fleet Corporation executed another contract with Groton for six steel ships (R. 48), and on April 20, 1918, another contract for six more steel ships. (R. 59.) The steel ships were to be constructed at Groton, Connecticut. (R. 49, 60.) These construction contracts, although made in the name of the Fleet Corporation, were entered upon by authority of the Emergency Shipping Fund provisions of the Urgent Deficiency Act of June 15, 1917 (40 Stat. 182; pp. 11-16, *infra*), which authorized the President to enter upon contracts for the construction of ships and which powers were duly delegated by appropriate Executive Orders to the Fleet Corporation (Brief in Opposition to Certiorari, p. 2; pp. 46-49, *infra*). After the Armistice, Groton was ordered to suspend the construction of three of the steel ships. (R. 21, 90.)

In March, 1919, Groton had become involved in financial difficulties and receivers were appointed by the State court, who continued to operate the two plants and to carry on construction work under

the contracts above mentioned. (R. 108.) While the receivers were in charge, those interested in Groton, including Charles W. Morse and his sons, endeavored to have the receivership lifted. Several conferences were held. (R. 108, 109.) From time to time the Fleet Corporation had previously loaned large sums of money to Groton, secured by mortgages on the shipbuilder's plants, which loans aggregated $1,800,000, plus interest, at the time Groton was so soliciting further advances. (R. 77.)

These negotiations culminated in the execution, on March 26, 1920, of a new contract which recited that it was between "Groton Iron Works, * * * party of the first part," and the Fleet Corporation, "representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America (hereinafter referred to as the owner), party of the second part." (R. 75.) The contract set forth that Groton had already completed and delivered five wooden ships and six steel ships. (R. 75.) It provided that the contract as to the three steel ships previously suspended and the three wooden hulls then under construction was cancelled and Groton agreed to accept $500,000 and certain ships and materials in full settlement of all its claims for just compensation, for suspension and cancellation. (R. 77–79.) This left three steel ships, then under construction, for completion and delivery. The contract declared the title to these three hulls to be in the United States (R. 78), and provision was made for payment to

Groton of an increased price for all nine of the steel ships over the price agreed upon in the prior contracts. (R. 79.) In consideration of such increased price Groton agreed to waive all other claims which had then accrued arising out of construction of the steel ships. (R. 77.) The contract fixed the amount due from Groton for principal and interest up to March 1, 1920, of the loans secured by the mortgages, at $1,888,106.68, and provided that maturity of the mortgages should be extended to July 1, 1921. (R. 77.) Provision was also made for an immediate advance of $250,000 to Groton on the uncompleted contracts. (R. 78.) This sum was to be turned over to the receivers and disbursed by them as a twenty per cent dividend to Groton's creditors. (R. 78.) The remaining eighty per cent due the creditors was to be paid by a series of promissory notes to be issued by Groton. Thus, the receivership was to be lifted and the plants restored to Groton so that its modified contracts might be completed. Article XII of the contract (R. 83) released the United States, the Shipping Board and the "Emergency Fleet Corporation, both in its corporate capacity and as representing the United States of America" from all other claims not provided for in the contract, except that provision was made (R. 84) for continuation of a reconciliation of accounts then in progress to determine the amount due Groton for completed construction work on the wooden ships.

The $250,000 which was to be distributed by the Receivers to the creditors was advanced and the receivership was lifted. Groton then resumed control of its plants and attempted to carry on construction of the three unfinished steel vessels. (R. 110.) The Fleet Corporation was making weekly advances for pay-roll requirements (R. 264), but on April 17, 1920, notified Groton that further money for completion of the ships must be provided by the shipbuilder because there had been paid and debited to Groton a sum in excess of all credits due under the agreement of March 26, 1920 (R. 263).

Groton then admitted that it was unable to continue construction without further financial assistance from the Fleet Corporation (R. 264–265), although less than a month earlier, when execution of the agreement of March 26, 1920, was being considered, Morse and his attorney had assured the Shipping Board that arrangements had been made to provide the necessary funds to pay off Groton's creditors and complete the ships (R. 109).

In the emergency, to prevent tying up work on the ships (R. 267), the Fleet Corporation advanced $46,424.66 more for the April 24th payroll (R. 270). Renewal of the receivership was considered. (R. 267.) After further negotiations more money was advanced to Groton. The three steel vessels were completed and delivered by Groton. (R. 111.) On

December 1, 1921, Groton filed its petition in bankruptcy in the District Court of Connecticut. (R. 28.)

The present litigation was instituted against the Fleet Corporation by Groton in February, 1921 (before the petition in bankruptcy), as an action at law in the Superior Court of Connecticut (R. 1), to recover $13,000,000 damages (R. 11), because of the suspension of construction of some of the ships and because of alleged breaches of the three shipbuilding contracts. The case was removed to the United States District Court, where, upon stipulation, it was transferred to the equity side. (R. 14.) Respondent Harwood, as Trustee in Bankruptcy (R. 15), filed a new bill of complaint, verified July 11, 1923 (R. 15–36), setting forth practically the same claims as those contained in the original complaint at law, but praying for an accounting, for a decree setting aside the settlement contract of March 26, 1920, on the ground of duress and fraud, and for a money judgment (R. 35–36). Respondents Siegel and Thatcher, as ancillary Receivers of United States Steamship Company, a corporation which owned all the capital stock of Groton, intervened. (R. 100–101, 102.)

Petitioner's answer (R. 86) denied all the allegations of the bill of complaint as to breaches of the contracts, duress, and fraud, and alleged that Groton had been overpaid to the extent of at least $5,000,000 (R. 96). As a first separate defense, petitioner alleged that by virtue of the contract

of March 26, 1920, Groton had settled all matters in controversy which had arisen prior thereto. (R. 93.) As a fourth separate defense, petitioner alleged that with respect to each and all of the transactions set forth in the bill, petitioner was acting solely as an agency of the United States under the powers delegated to petitioner by the President, pursuant to the Act of June 15, 1917 (c. 29, 40 Stat. 182); that petitioner had not assumed and was under no personal liability to plaintiff because of such transactions; and that plaintiff's sole remedy, if any, was by suit against the United States in the manner provided by law, that is, in the Court of Claims. (R. 95.)

On motion, the court severed the special issues (R. 99), and referred petitioner's first and fourth separate defenses to a Special Master to take testimony and report thereon (R. 98), because a determination adverse to plaintiff on either issue might obviate taking any further testimony (R. 97).

The Special Master's report (R. 102) contained special findings of fact and conclusions of law. It sustained petitioner on every issue raised by the first defense and held that the rights of the parties were fixed by the contract of March 26, 1920. (R. 111, 112, 113.) As to the fourth defense, the Master concluded that the suit could be maintained against the Fleet Corporation, as the transactions were between Groton and the Fleet Corporation and not with the United States. (R. 113, 117–120.) This

conclusion was in large part dependent upon the Master's interpretation of the *Sloan* and *Astoria cases,* 258 U. S. 549, although the applicable facts in this case differ from the applicable facts in those cases.

After hearing on exceptions of both parties to this report, the District Court rendered an opinion (R. 312), which sustained the Master's report as to the first defense (R. 313), and sustained petitioner's exceptions to the Master's report as to the fourth defense (R. 313) on the ground that the evidence had established that (R. 318)—

> the Fleet Corporation was acting as agent of the United States in behalf of the United States, under the statutory powers granted to the President and by him delegated to the Fleet Corporation, to procure the construction of ships for the United States. The Fleet Corporation is, therefore, not liable.

Accordingly, a decree was entered dismissing the bill (R. 318).

On appeal, the Circuit Court of Appeals sustained the first defense (R. 342), but it reversed the District Court as to the fourth defense, and held that petitioner was personally bound by the contract of March 26, 1920, and that the District Court erred in sustaining this defense (R. 338–342). This conclusion was based largely upon the authority of the *Sloan-Astoria cases.*

Petition for rehearing was denied. (R. 346.) The case is now here on certiorari.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

I. In reversing the decree of the District Court as to the fourth defense.

II. In holding that the Fleet Corporation was personally bound by the contract of March 26, 1920, and subject to an accounting under that contract.

SUMMARY OF ARGUMENT

I. In executing the contract of March 26, 1920, the Fleet Corporation was acting as the agent of a disclosed sovereign principal. Besides disclosing in the description of the parties that it was acting solely in a representative capacity and solely on behalf of its principal, much of the subject matter of the contract relates to matters, such as the cancellation of contracts and the payment of just compensation therefor, with which the Fleet Corporation, under its corporate charter powers, had no concern. Moreover, the authority under which this public agent was acting existed by reason of Acts of Congress and Executive Orders, of which everyone was chargeable with notice.

When a public officer or agent acts in the line of his duty and by legal authority, his contracts, made on account of the Government, are public and not personal. They inure to the benefit of and bind the Government, not the agent. It can not matter that the public agent is a corporation rather than an individual.

In authorizing the President to delegate to such agency or agencies as he might determine the power and authority conferred on him for the production of ships for the use of the Nation in the war emergency, Congress did not intend that the public agents so selected should enter into contracts for the benefit of the United States upon the agents' own personal credit, nor that the enormous sums of public money appropriated were to be expended for the personal account of the agents; nor did Congress intend that such agents should be held personally liable for their lawful acts and engagements while so employed.

The decision of this Court in the *Sloan-Astoria cases* is not authority for holding the Fleet Corporation personally liable in this case, because the only question determined in those cases was the jurisdiction of the District Courts to entertain suits against the Fleet Corporation. The contract in this case differs in many particulars from the contract considered in the *Sloan-Astoria cases*.

II. The corporate liability of the Fleet Corporation to account to respondents in this suit, if any exists, must be predicated upon the contract of March 26, 1920, which the court below found was an accord and satisfaction of all prior demands. Since respondents have not asked for a review of that finding of the Circuit Court of Appeals, they may not question it before this Court. If the court below was right in holding that the Fleet Corporation had made itself personally liable on

the earlier contracts with Groton because of the frame of the earlier instruments, the contract of March 26, 1920, constituted a novation by the United States of any liability which previously may have been incurred by the Fleet Corporation, and Groton accepted the novation in full accord and satisfaction of all its rights arising from the earlier contracts.

III. If the form of the contracts involved in this case, in the light of the applicable statutory provisions, was not sufficient to exclude liability on the part of the Fleet Corporation, this liability was assumed and taken over by Congress on behalf of the United States, and the remedy provided by statute for the enforcement of this liability is exclusive.

The decree of the Circuit Court of Appeals should be reversed and the suit dismissed.

ARGUMENT

I

IN EXECUTING EACH OF THE CONTRACTS, THE FLEET CORPORATION WAS ACTING AS THE AGENT OF A DISCLOSED SOVEREIGN PRINCIPAL

The contracts here involved, providing for the construction of vessels, were entered upon by authority of the Urgent Deficiency Act of June 15, 1917 (40 Stat. 182; pp. 11–16, *infra*), which empowered the President to place orders for the construction of vessels, through the Fleet Corporation. Among the powers so conferred upon the President was the power to construct vessels, modify, suspend

and cancel contracts for the construction of vessels, and determine just compensation for such modification, suspension or cancellation. *Skinner & Eddy Corporation* v. *McCarl,* 275 U. S. 1, 9, 10. The contract of March 26, 1920, was negotiated by the Fleet Corporation under such authority and not by virtue of powers conferred by its charter for private corporate purposes. That it was the contract of the United States is shown by the following introductory language of the contract itself (R. 75)—

> United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America (hereinafter referred to as the owner), party of the second part, * * *.

So Groton knew it was dealing with a public agent acting for a sovereign principal. The presumption that the agent of a known principal intends to bind the latter rather than himself applies with peculiar force to a public agent, so that it is incumbent upon him who seeks to hold a known public agent personally responsible to adduce clear proof of an intention so to be bound. (Mechem, Agency (2d ed.), Sec. 1428, and cases cited.) Groton was bound to know it was contracting with a public agent. The related Acts of Congress and Executive Orders alone were notice of this fact. *Russell Motor Car Co.* v. *United States,* 261 U. S.

514, 523; *Buffalo Union Furnace Co.* v. *Fleet Corporation*, 291 Fed. 23 (C. C. A. 2d). In the latter opinion it is clearly indicated that each contract of the kind here concerned was made with the knowledge imputed by law that the Fleet Corporation was empowered to act as the President's agent; the court concluded that (p. 27):

> If there be any assumption or presumption, it must be that defendant acted under its lawful powers as agent.

Although it adopted the accepted rule in that case, the same court in the present case said (R. 339):

> It had [has?] been now authoritatively settled that, although in making such contracts [referring to those made in 1917–1918] the Fleet Corporation was exercising powers derived from the Executive Orders issued pursuant to the urgent deficiency act for the purpose of carrying out its provisions, it is a principal and responsible as such.

If the President had executed such contracts, would he be held to be a principal and responsible as such? Or was the court below persuaded that because the public agent is a corporation some different rule of general law applied than that applicable when the agent is an individual person? The provisions of the contract of March 26, 1920, show that the Fleet Corporation acted only as an agent. This is shown by Article XV of the Contract (R. 85), which provides that "No Member of, or Dele-

gate to Congress * * * shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom." This article must have been included because of the provisions of Section 114 of the Criminal Code which make it an offense for such an officer to benefit by any contract only when the contract is "made or entered into *in behalf of the United States* by any officer or person authorized to make contracts on its behalf" (italics ours), and make void all contracts made in violation of the section.

Paragraph (e) of Article II (R. 77) allows the contractor $500,000 in settlement and adjustment of "all obligations of the owner to the contractor or to the receivers, arising out of the suspension and cancellation of the three hulls, 10 to 12 inclusive, under contract 225 S. C." The word "owner" as here employed seems to mean the United States because under the Act of June 15, 1917 (pp. 45–46, *infra*), the obligation to make "just compensation," upon suspension or cancellation of a contract pursuant to that Act, is an obligation imposed on the United States. If the Fleet Corporation was not acting as a duly authorized public agent in executing the contract of March 26, 1920, it could not bind the United States to pay "just compensation" and it would have no occasion to attempt to bind itself to make such payment. Article III (R. 78) likewise provides for cancellation of the contract for three steel vessels and three wooden hulls, and *awards* "just compensation" (R. 79) to Groton on account of the cancella-

tions. It is true, as was pointed out by the respondents in their brief in opposition to the petition for certiorari (pp. 18–19), that one of the earlier contracts in this case provided that the contractor should "be reimbursed for losses sustained" by certain cancellations. (Paragraph XVIII of Contract 225 S. C.; R. 71.) But the cancellation contemplated by this provision was to be made only if "the progress of the work [should] not be satisfactory to the owner." (R. 71.) This clause made no provision for compensation for a cancellation by the United States acting in the public interest, and it was such a cancellation which actually occurred. The "just compensation" provided for by the statute (Act of June 15, 1917) was an obligation of the United States, and it is this obligation which was settled by the contract of March 26, 1920.

The contract provided that a part of this "just compensation" was to be paid in kind—that is, by turning over to the contractor a completed wooden ship, a wooden hull, and also certain materials "delivered by the owner." (R. 79.) The owner of the completed ship was the United States. See the Executive Orders of July 11, 1917, and December 3, 1918, pp. 46–49, *infra*. It was the Shipping Board, and not the Fleet Corporation, that was there directed to take title to, and operate, manage and dispose of all constructed ships acquired under authority of the Act of June 15, 1917. That Congress contemplated that the "owner" of the materials was the United States appears from the

following language in the Sundry Civil Act, approved July 19, 1919 (c. 24, 41 Stat. 163, 181):

> Any material or plant, as defined under the emergency shipping fund provision of the Deficiency Appropriation Act approved June 15, 1917, acquired by the United States Shipping Board Emergency Fleet Corporation, may be disposed of as the President may direct.

Congress would not have undertaken so to dispose of the "material or plant" had it not understood that it was dealing with the property of the United States. By Executive Order dated August 11, 1919 (see pp. 49-51, *infra*), the President delegated his power to dispose of these surplus materials to the United States Shipping Board and authorized that Board to sell or dispose of such materials through the agency of the Fleet Corporation.

The Fleet Corporation had complete and full authority as agent to execute this contract and to make the promises therein on behalf of the United States. In its private corporate capacity it did not have like power to award "just compensation" for the cancellation of contracts and did not have like power to dispose of ships and materials acquired by it as the agent of the President.

There are in the contract several references to "the owner" so phrased as to imply that the Fleet Corporation regarded and referred to itself as "the owner." This confusion of identity and ownership can only be explained when it is remembered that up to the decision of this Court

in the *Sloan-Astoria-Eastern Shore cases*, 258 U. S. 549, the officials and attorneys of the Fleet Corporation asserted and consistently maintained that the Fleet Corporation was an integral arm and branch of the Government, similar to the Navy Department or any other executive department or bureau. This very confusion shows that in making the contract Groton could not have been relying on the separate corporate liability of the Fleet Corporation, but rather regarded the Corporation as indistinguishable from the Government, as nothing more than an agent acting on behalf of the United States.

Where a public officer or agent acts in the line of his duty and by legal authority, his contracts made on behalf of the Government are public and not personal. They inure to the benefit of and bind the Government, and not the officer. In *Parks* v. *Ross*, 11 How. 361, this Court said (p. 374):

> Now, it is an established rule of law, that an agent who contracts in the name of his principal is not liable to a suit on such contract; much less a public officer, acting for his government. As regards him the rule is, that he is not responsible on any contract he may make in that capacity; and wherever his contract or engagement is connected with a subject fairly within the scope of his authority, it shall be intended to have been made officially, and in his public character, unless the contrary appears by satisfactory evidence of an absolute and unqualified engagement to be personally liable.

See also *Hodgson* v. *Dexter*, 1 Cranch 345; *Sheets* v. *Selden's Lessee*, 2 Wall. 177; *District of Columbia* v. *Camden Iron Works*, 181 U. S. 453.

The opinion of the court below states (R. 341) that the decisions above cited "do not establish that a public agent may not be personally liable for a contract made by him on account of the Government, but only that a presumption arises that a public official contracting in behalf of the Government does not intend to bind himself personally." The court below then held that this presumption "was overcome by the contracts entered into, similar in terms and containing the same characteristics, which were considered in the *Sloan case.*"

This conclusion was reached even as to the settlement contract of March 26, 1920, because "the obligations of the owner released by this settlement contract were the obligations of the Fleet Corporation arising under the [prior] contracts * * *." (R. 340.) In reaching this conclusion the Circuit Court of Appeals overlooked a point of distinction between the contracts, to which we have already referred. The contracts involved in the *Sloan cases* were contracts which the Fleet Corporation could have made on its own behalf. But the contract of March 26, 1920, involved in this case contained as its principal feature a settlement of liability on account of suspension and cancellation of other contracts for the construction of ships. This liability for cancellation was one imposed upon the *United States* by the Act of June

15, 1917. That the respondents could have prosecuted their claims against the United States for their loss on account of the cancellation of the construction contracts is established by *Freygang* v. *United States*, reported under the title of *Russell Motor Car Co.* v. *United States*, 261 U. S. 514. This was not a liability owed by the Fleet Corporation to Groton. In contracting on this subject the Fleet Corporation could have been acting only as agent.

We can not concede that the *Sloan-Astoria* decision should be construed as holding that the Fleet Corporation was not only *suable* but was also *liable* as principal even on contracts executed by it in behalf of the Government under the authority delegated to it. It appears that the only issue raised by the record in those two cases was whether the respective District Courts did or did not have jurisdiction, because of the immunity from suit claimed by the Fleet Corporation. In discussing the *Sloan case*, which was an action sounding in tort, the majority opinion points out that the Fleet Corporation, by reason of its incorporation, possessed an identity apart from that of the United States; that any person within the jurisdiction is amenable to the law; and even though such person, either natural or artificial, is an instrumentality or agent of the Government for the highest ends, he does not cease to be answerable for his acts, merely because he is such agent. Hence the District Court had *jurisdiction* of the *Sloan* suit.

The same reasoning was applied to the *Astoria* suit, which was an action *ex contractu*. In discussing the provisions of the *Astoria* contract, this Court said (p. 569): "The whole frame of the instrument seems to us plainly to recognize the Corporation as the immediate party to the contract." In employing this language we understand that the Court intended to make clear the difference in identity between the agent that actually executed the contract and the United States, for the Fleet Corporation was then contending in effect that its identity had been merged in that of the Government of the United States and that it possessed the sovereign's immunity from suit. We do not understand this reference to the Fleet Corporation as "the immediate party to the contract" as a holding that the Fleet Corporation was therefore *liable* as a principal, regardless of what the proof might show.

Our interpretation seems to be borne out by the next two sentences:

> The distinction between it and the United States is marked in the phrase last quoted. If we are right in this, further reasoning seems to us unnecessary to show that *there was jurisdiction of the suit*. (Italics ours.)

From the dissenting opinion it appears that the minority of the Court placed the same interpretation on the decision as the one we are now suggesting. The dissenting opinion said (p. 572):

The opinion of the court is carefully drawn and if its conclusion is to rest merely on the nice distinction that it does not clearly appear from a proper construction of the pleadings that the acts here complained of were acts done under authority delegated by the President to the Fleet Corporation, as his agent, then the question I have been discussing and which seems to me to be in these cases is not here decided, and will only arise on answer and evidence.

Since the *Sloan* and *Astoria cases* were decided eight years ago, the exact question raised by the record here has not been presented to this Court "on answer and evidence." But there have been cases in which the status of the Fleet Corporation has been considered. See *Skinner & Eddy Corporation* v. *McCarl*, 275 U. S. 1, and *Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415, 422. In the latter this Court said that the Fleet Corporation "has never done any business, or conducted any operation, except on behalf of the United States."

Our understanding of the effect of the decision in the *Sloan-Astoria cases* is shared not only by the District Judge in the court below in the instant case (R. 316) but also by two other Federal courts in recent opinions.

In *Astoria Marine Iron Works* v. *Fleet Corporation*, 295 Fed. 415, where the same plaintiff was suing on a Fleet Corporation contract similar to the one that was before this Court, the Fleet Corpora-

tion filed an answer denying liability to plaintiff on the same grounds that are being asserted in this case in the Fourth Separate Defense. (R. 95.) Plaintiff demurred and moved to strike the answer. In overruling the demurrer and motion, District Judge Bean said (p. 418):

> Great reliance is placed by plaintiff on the decisions in the *Sloan Shipyards, supra,* and kindred cases; but as I read the opinions in these cases the question here presented, although urged upon the attention of the court, was deemed not to be within the record, and is not decided. Two of the cases were appeals from judgments sustaining demurrers to the complaints and dismissing the actions, on the ground that the Fleet Corporation was a mere bureau or arm of the Government and entitled to the immunity of the sovereign. The court ruled that it was a public business corporation, and liable to be sued for its torts or on its contracts the same as any other corporation, and therefore the complaints stated a cause of action; but the question of whether it is personally liable on contracts made by it as agent or representative of the President under the war powers conferred upon him was not decided.

In *Fleet Corporation* v. *Galveston Drydock & Const. Co.,* 13 F. (2d) 607 (certiorari denied, 273 U. S. 725), a judgment had been entered against the Fleet Corporation for certain repair work on a Shipping Board vessel on written orders given by the Fleet Corporation. On writ of error the Cir-

cuit Court of Appeals for the Fifth Circuit reversed and remanded. The court said (pp. 611–612):

> We are of opinion that the language of the written instruments evidencing the contracts sued on, when that language is considered in the light of statutory provisions determining by whom the work and labor called for by those contracts may be authorized to be done, and in the light of the facts that the Fleet Corporation, acting in its own behalf as principal, was without authority to have that work done, but could legally act for the Shipping Board in having it done, requires the conclusion that the Fleet Corporation in making those contracts acted as the agent of the Shipping Board, and did not thereby obligate itself to pay for the material and labor called for by those contracts. Under the laws which were in force when those contracts were made, the Fleet Corporation could act in two entirely different capacities, as a private corporation carrying on business in its own name as a principal, and as the agent of the Shipping Board, an administrative branch of the Government. It has been settled that the Fleet Corporation is subject to suit and judgment against it on a contract made in its own name as principal in the conduct of a business in which it is authorized to engage. *Sloan Shipyards* v. *U. S. Fleet Corp.*, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762.
>
> It is equally well settled that an agent of the Government or of a branch thereof is not

> personally liable on a contract made on behalf of his principal while acting within the scope of his authority. * * *

While the contracts considered in the *Galveston Drydock case* were made by the Fleet Corporation pursuant to authority delegated to it under Section 35 of the Merchant Marine Act of 1920, the principle applied is the same as that recognized by Judge Bean in the *Astoria case.*

The respondents place reliance upon the case of *United States* v. *Wood,* 290 Fed. 109 (C. C. A. 2d), affirmed by this Court, *per curiam,* 263 U. S. 680. That case arose on an attempt by the United States to obtain priority by suing in its own name upon the same claim on which the Fleet Corporation was denied priority in *Fleet Corp.* v. *Wood,* one of the cases of the *Sloan-Astoria* group, decided in 258 U. S. 549. The Circuit Court of Appeals which decided this second *Wood case* has shown that it was decided upon a basis which has no application to the present case. In *Whan* v. *Green Star S. S. Corp.,* 22 F. (2d) 483 (C. C. A. 2d), it said (p. 488):

> It is apparent that, although in the first Woods case appeal priority was denied, the claim which had been presented in the name of the Fleet Corporation was allowed to stand, for the order was affirmed. Therefore there was a general claim filed in bankruptcy, when the United States filed its bill seeking priority or to impress a trust for the same claim in the hands of the trustee.

> The United States did not deny the agency of the Fleet Corporation in the second suit, but claimed that it was acting for it, and not in an individual capacity. A judgment against the Fleet Corporation was likewise binding against the United States, and therefore the question was settled. The claim arose by the indebtedness of the Eastern Shores Shipbuilding Corporation. It was but one debt, and it was impossible to say that it was owed by [to?] the Fleet Corporation for the full amount as allowed as a general claim, and that it was also liable as a preferred claim against [to?] the United States.

The respondents also relied in their brief in opposition to the petition for certiorari on several cases in the several Circuit Courts of Appeals. These are *Fleet Corporation* v. *South Atlantic Drydock*, 300 Fed. 56 (C. C. A. 5th); *United States* v. *Matthews*, 282 Fed. 266 (C. C. A. 9th); *Fleet Corporation* v. *Banque Russo-Asiatique, London*, 286 Fed. 918 (C. C. A. 3rd); *Shooters Island Shipyard Co.* v. *Standard Shipbuilding Corporation*, 293 Fed. 706, 3 F. (2d) 1022 (C. C. A. 3rd); *Fleet Corporation* v. *Rosenberg Bros. & Company*, 12 F. (2d) 721 (C. C. A. 9th), reversed on other grounds, 276 U. S. 202; *Cohn* v. *Fleet Corporation*, 20 F. (2d) 56 (C. C. A. 6th); *Fleet Corporation* v. *Tabas*, 22 F. (2d) 398 (C. C. A. 3d); *Dietrich* v. *Fleet Corporation*, 9 F. (2d) 733 (C. C. A. 2d); *Eichberg* v. *Fleet Corporation*, 273 Fed. 886, 14 F. (2d) 248 (Ct. of App. D. C.).

Of these the *Matthews case* is clearly inconsistent with the later decision in the same circuit in *United States* v. *Skinner & Eddy Corporation,* 35 F. (2d) 889, 892. *Fleet Corporation* v. *Banque Russo-Asiatique, London, Fleet Corporation* v. *Rosenberg Bros. & Co.* and *Cohn* v. *Fleet Corporation* arose as a result of the activities of the Fleet Corporation in operating ships and have no bearing on the effect of contracts for the construction of ships. In *Fleet Corporation* v. *South Atlantic Drydock,* and *Shooters Island Shipyard Co.* v. *Standard Shipbuilding Corporation,* the form of the contract in question does not appear in the opinion and it consequently can not be determined how clearly the Fleet Corporation indicated that in contracting it was contracting only as agent. These contracts did not involve settlement of just compensation for cancellation of contracts. In *Eichberg* v. *Fleet Corporation,* the contract did not indicate that the Fleet Corporation was acting as agent. *Fleet Corporation* v. *Tabas* seems to lend some support to respondents' contention, but the opinion shows that the court failed to observe the important distinction between the Shipping Board and the Fleet Corporation. *Dietrich* v. *Fleet Corporation,* which tends to support respondents' contention, arose out of the operation rather than the construction of ships, and was decided by the same court that decided the case which is here being reviewed, as were *Providence Engineering Corporation* v. *Downey Shipbuilding Corporation,* 294 Fed. 641,

(certiorari denied, 264 U. S. 586), and *Smith* v. *Fleet Corporation*, 26 F. (2d) 337 (certiorari denied, 278 U. S. 628). Most, if not all, of these decisions are based upon what we regard as an erroneous interpretation of the *Sloan-Astoria* decision.

This discussion shows, it is submitted, that in entering into the contracts involved in this case the Fleet Corporation was acting only as agent for a sovereign principal, and that in so doing it incurred no liability in its individual corporate capacity.

II

THE CORPORATE LIABILITY OF THE FLEET CORPORATION, IF ANY EXISTS, MUST BE PREDICATED UPON THE CONTRACT OF MARCH 26, 1920

The respondents' bill of complaint (R. 15) sets forth several contracts executed by the Fleet Corporation in the years 1917–1918 and seeks an accounting for various alleged breaches thereof. But the Fleet Corporation's answer pleaded as a first separate defense (R. 93) that by virtue of the provisions of the contract of March 26, 1920 (R. 75), Groton, for a valuable consideration, had released the United States and the Fleet Corporation from all claims and causes of action accruing prior to that date.

This defense was based upon Paragraph 1 of Article XII of the contract of March 26, 1920 (R. 83) which contained a release from Groton to the United States and the Fleet Corporation "from any and all claims, demands, causes of action, suits, expenses, and all other charges of whatsoever kind or

nature which it or anyone whomsoever had, has, or may have against the United States of America, and the Emergency Fleet Corporation, or either of them, by reason of contracts No. 15 W. H., 57 S. C., and 225 S. C., or the supplements thereto up to the date hereof." Paragraph 2 of this Article of the contract operated to limit to some extent the broad terms of this general release. This limiting paragraph read as follows (R. 84):

> 2. The reconciliation of the accounts of the contractor in respect of the construction of wood vessels at the Noank plant with those of the owner, which has been in progress between the receivers and the New York district office of the owner during the past four months shall be continued with respect to items upon which a reconciliation or agreement has not been reached, and any amount found due to the contractor in respect of any of the hulls, (the uncompleted hulls to be paid for on the basis of the degree of completion of each) shall be paid to the contractor, anything contained in this agreement to the contrary notwithstanding, in addition to the wood hulls, wood ship and bill of material No. 500 awarded to the contractor as just compensation for cancellation as provided in Article III, paragraph 2, hereof. If any money should be found due the owner by reason of said reconciliation, the amount thereof shall be paid by the contractor to the owner, or deducted by the owner from any moneys or credit due the contractor.

The only limitation in this paragraph on the generality of the preceding release is that if a balance is found due to Groton as a result of the reconciliation relating to the one contract involving wooden vessels, it "shall be paid to the contractor." Since the Fleet Corporation in negotiating the contract of which this clause is a part was "representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America" (R. 75), it seems to follow that any payment which it should be determined was due under this clause would be made by the United States.

Except for Paragraph 2 of Article XII just referred to, the contract of March 26, 1920, wholly superseded all the earlier contracts so far as any liability to Groton was concerned. It is true that Article XVII of the contract provided as follows (R. 85):

> This agreement is supplemental to contracts 15 W. H., 57 S. C., and 225 S. C. and the supplements thereto, and where inconsistent therewith shall be held to govern. Except as herein otherwise provided, the provisions of the said contracts and supplements thereto shall remain in full force and effect.

This Article, of course, is by its own terms of little importance in view of the fact that the release in Article XII above referred to was complete and general as to all liability theretofore incurred with the exception which has been discussed.

The Special Master, to whom the question raised by this first separate defense was referred, reported (R. 111) that by the contract of March 26, 1920—

> the parties intended to and did adjust all differences then existing between them to that date. And Groton, in Article XII, section I * * * released the Fleet Corporation from all claims, demands, causes of action, etc., which it had against said Fleet Corporation to that date, except the matter specifically excluded.

The "matter specifically excluded" was that covered by this section 2 of Article XII under discussion. Although it was excluded from the operation of the release, the effect of the contract was to make the United States the party liable, if any liability to Groton should be shown at the conclusion of the accounting contemplated by the section.

The Special Master also found (R. 112) that no fraud, deceit, duress or misrepresentation was resorted to by the Fleet Corporation, that Groton accepted and retained the benefits contained in the contract (R. 113), and that the contract should not be set aside in whole or in part. (See Reasons for Master's conclusions, R. 114.) The respondents' exceptions to these findings (R. 291) were overruled by the District Court (R. 313), and the respondents' contentions as to this ruling (R. 321) were also overruled by the Circuit Court of Appeals. That court said (R. 342):

> The supplemental contract of March 26, 1920, released the parties from the obligations and claims prior thereto. The master was sustained by the court below in holding there was an accord and satisfaction, and in his conclusion that the settlement was held free from fraud and misrepresentation. This finding, based upon contradictory evidence, depending upon the credibility of witnesses, is sufficiently supported by credible testimony, and as such we accept it.

The respondents are not now in a position to ask this Court to review this ruling of the court below. *Charles Warner Co.* v. *Independent Pier Co.*, 278 U. S. 85, 91; *Federal Trade Commission* v. *Pacific States Trade Assn.*, 273 U. S. 52, 66.

If the Fleet Corporation was liable under the earlier contracts with Groton, the contract of March 26, 1920, constituted a novation by which the United States undertook all the obligations due to Groton and which Groton accepted in full accord and satisfaction of all preexisting rights it may have had against the Fleet Corporation. The requisites of a novation are (1) a valid prior obligation to be displaced; (2) the consent of all the parties to the substitution; (3) a sufficient consideration; (4) the extinguishing of the old obligation; (5) the creation of a valid new one. *In re Ransford*, 194 Fed. 658, 662 (C. C. A. 6th). Even if it be assumed that in the earlier contracts with Groton, the Fleet Corporation had made itself personally liable to Groton because of

the phraseology of the contracts, we contend that by the contract of March 26, 1920, in which the Fleet Corporation made no promises except as "representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America," the United States was substituted as the obligor to Groton, so that the only liability which thereafter remained was that of the United States, and not that of the Fleet Corporation.

III

WHOEVER MAY HAVE BEEN BOUND BY THE CONTRACTS HERE IN QUESTION, THE LIABILITY HAS BEEN UNDERTAKEN BY THE UNITED STATES, AND CONGRESS HAS PROVIDED AN EXCLUSIVE REMEDY FOR ITS ENFORCEMENT

If the form of the contracts involved in this case, in the light of the applicable statutory provisions, was not sufficient to exclude liability on the part of the Fleet Corporation, this liability was, by Act of Congress, assumed by the United States, and an exclusive remedy for the enforcement of this liability was provided by statute.

In the Merchant Marine Act, approved June 5, 1920, 41 Stat. 988 (pp. 47-57, *infra*), Congress made elaborate provisions for the carrying out of the ship construction program initiated and theretofore carried out through the agency of the Fleet Corporation, for the disposition of the property so acquired, and for the settlement of the claims arising out of such contracts. Section 2(a) of the Act revoked the President's authority, and necessarily

that of his agent, the Fleet Corporation, to exercise further the powers authorized and to spend the money appropriated by the emergency legislation. (Act of June 15, 1917, as amended.) Section 2(b) (1) directed that "all contracts or agreements" previously made under the emergency legislation should "be assumed and carried out by the United States Shipping Board, hereinafter called 'the board.'" Provisions for the enforcement of the liability so undertaken was made in Section 2(b) (2) and Section 2(c) of the Act.

Section 2 (b) (2) provided:

> All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject *to the provisions of subdivision (c) of this section*, as if this Act had not been passed. (Italics ours.)

Section 2, subdivision (c), provided:

> As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided*,

> That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed.

By the first of these provisions Congress provided that all rights and remedies accruing on these contracts would be unaffected by the Act, "subject to the provisions of subdivision (c) of this section." By subdivision (c), the liability was to be adjusted and settled by "the board," which was to act, of course, on behalf of the United States. And it was further provided that any one dissatisfied with the decision of the board should "have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed." The right to sue the United States, which had been given by the Acts repealed and which was referred to in this clause, was a right to sue in the Court of Claims, or if the amount involved were less than $10,000, in the District Courts. Act of June 15, 1917, c. 29, 40 Stat. 182, 183; pp. ~~44, 45–46~~ 72-73-74, *infra*.

Congress at the same time took away from the Fleet Corporation all authority over the contracts, and stripped the Fleet Corporation of all assets acquired under the contracts. Merchant Marine Act, 1920, Section 4; pp. ~~53–54~~ 51-52, *infra*. It does not seem possible that Congress intended by Sections 2(b)(2) and 2(c) to preserve a naked right to obtain a judgment against an agent who possessed no means for

satisfying such a judgment. Having provided a remedy against the United States, Congress also made provision for satisfying the claimants. The General Appropriation Act of June 12, 1922, c. 218, 42 Stat. 635, 647 (p. [illegible], *infra*), under the title "Shipping Board," provided:

> For the payment of claims, damage charges and miscellaneous adjustments, authorized under the provisions of the Merchant Marine Act, 1920, $50,000,000, of which $30,000,000 shall be immediately available: *Provided,* That no claim shall be paid out of the amount appropriated herein unless the Shipping Board shall find that such claim grew out of an agreement, expressed or implied, entered into with the United States Shipping Board or the Emergency Fleet Corporation or their legal representatives.

Whatever liability the Fleet Corporation may have incurred while acting as agent, we submit that Congress intended to have the Government assume this liability and to provide an exclusive remedy for its enforcement against the United States. See *United States* v. *Pfitsch,* 256 U. S. 547; *Nassau Smelting & Refining Co.* v. *United States,* 266 U. S. 101. The intention of Congress to make this remedy exclusive is further indicated by its action in passing the Suits in Admiralty Act, approved March 9, 1920, c. 95, 41 Stat. 988. This Act and the Merchant Marine Act were both considered by the same committees and were adopted at the same session of Congress. They were both intended to pro-

vide an orderly system for carrying out the responsibilities incurred by the Government through its merchant marine program. The Suits in Admiralty Act provided an exclusive remedy against the United States for claims arising out of the operation of Government-owned ships, whether such operation was carried on by the Shipping Board, by the Fleet Corporation, or by such operating companies as they might employ. *Johnson* v. *Fleet Corporation*, and related cases, Nos. 5, 32, 56, 123, October Term, 1929, decided January 6, 1930. See also *Fleet Corporation* v. *Rosenberg Bros.*, 276 U. S. 202. The remedy against the United States provided by the Merchant Marine Act should similarly be held exclusive.

CONCLUSION

It follows that the rulings of the lower court and the judgment or decree entered thereon are erroneous and should be reversed and the judgment of the District Court affirmed.

Respectfully submitted.

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FEBRUARY, 1930.

APPENDIX

Shipping Act of 1916, c. 451, 39 Stat. 728, 730–732

SEC. 5. That the board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels: * * *

* * * * *

SEC. 7. That the board, upon terms and conditions prescribed by it and approved by the President, may charter, lease, or sell to any person, a citizen of the United States, any vessel so purchased, constructed, or transferred.

* * * * *

SEC. 11. That the board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. The total capital stock thereof shall not exceed $50,000,000. The

board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: *Provided,* That no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessel constructed, purchased, leased, chartered, or transferred under the authority of this Act unless the board shall be unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board.

* * * * *

At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved. The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the board. The board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms and, after payment of all debts and obligations, deposit the proceeds thereof in the Treasury to its credit. All stock in such corpora-

tions owned by others than the United States at the time of dissolution shall be taken over by the board at a fair and reasonable value and paid for with funds to the credit of the board. In case of disagreement, such value shall be determined in the manner provided in section ten.

* * * * *

SEC. 13. That for the purpose of carrying out the provisions of sections five and eleven no liability shall be incurred exceeding a total of $50,000,000, and the Secretary of the Treasury, upon the request of the board, approved by the President, shall from time to time issue and sell or use any of the bonds of the United States now available in the Treasury under the Acts of August fifth, nineteen hundred and nine, February fourth, nineteen hundred and ten, and March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed $50,000,000: *Provided,* That any bonds issued and sold or used under the provisions of this section may be made payable at such time within fifty years after issue as the Secretary of the Treasury may fix, instead of fifty years after the date of issue, as prescribed in the Act of August fifth, nineteen hundred and nine.

The proceeds of such bonds and the net proceeds of all sales, charters, and leases of vessels and of sales of stock made by the board, and all other moneys received by it from any source, shall be covered into the Treasury to the credit of the board, and are hereby permanently appropriated for the purpose of carrying out the provisions of sections five and eleven.

Urgent Deficiency Act of June 15, 1917, c. 29, 40 Stat. 182–183, 217

Emergency Shipping Fund

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quality usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities, or qualities of the ships or material so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for

by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: *Provided,* That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

* * * * *

SEC. 3. That the appropriations contained herein shall be available for the payment of obligations on account of the existing emergency incurred prior to the passage of this Act and which are properly chargeable to such appropriations.

Executive Order, July 11, 1917

Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.

By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an Act of Congress entitled "An Act Making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, I hereby

direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said Board, be exercised directly by the said Board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

WOODROW WILSON.

THE WHITE HOUSE, *July 11, 1917.*

Executive Order, December 3, 1918

Delegating to the United States Shipping Board and to the United States Shipping Board Emer-

gency Fleet Corporation, respectively, powers granted to the President by Acts of Congress relative to the emergency shipping fund and approved on or prior to November 4, 1918.

Whereas, by Executive Order, No. 2664, dated July 11, 1917, I delegated to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved June 15, 1917; and

Whereas, since the issuance of said Executive Order the said powers granted in said act have been variously affected or extended by the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved October 6, 1917, by public act No. 138, 65th Congress, approved April 22, 1918, amending said section of said act of June 15, 1917, and by the sections entitled "Emergency shipping fund" in the sundry civil appropriation act approved July 1, 1918, and in the first deficiency appropriation act, 1919, approved November 4, 1918, respectively:

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said order No. 2664, but in no way limiting or restricting the effect thereof, or of acts heretofore done in pursuance thereof, I do hereby delegate all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may

be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive Order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways and piers, and to constructed vessels or parts thereof or charters therein; to the operation, management and disposition of such dry docks, marine railways, piers and vessels; and to such other matters as are not herein mentioned.

3. All acts heretofore done by said Corporation or by said Board, with reference respectively to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

WOODROW WILSON.

THE WHITE HOUSE, *December 3, 1918.*

Executive Order, August 11, 1919

Directing the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation to dispose of material or plants in their discretion.

Whereas, "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1920, and for other purposes," approved July 19, 1919, provides:

> Any material or plant, as defined under the emergency shipping fund provision of the Deficiency Appropriation Act approved

> June 15, 1917, acquired by the United States Shipping Board Emergency Fleet Corporation, may be disposed of as the President may direct.

And whereas, said Deficiency Appropriation Act, approved June 15, 1917, as amended by "An Act Making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918, defines the words "material" and "plant" as follows:

> The word "material" shall include stores, supplies, and equipment for ships, and everything required for or in connection with the production thereof.
>
> The word "plant" shall include any factory, workshop, warehouse, engine works; buildings used for manufacture, assembling, construction, or any process; any shipyard, drydock, marine railway, pier, or dockyard and discharging terminal and any facilities or improvements connected with any of the foregoing descriptions or property.

Now, therefore, by virtue of the authority vested in me by said laws, but in no way limiting or restricting the effect of previous Executive Orders and Proclamations delegating powers and authority to the United States Shipping Board or the United States Shipping Board Emergency Fleet Corporation.

1. I hereby direct the United States Shipping Board to exercise all powers and authority now vested in me in reference to the disposition of materials or plants as above defined. I hereby direct said Board, in its discretion, to sell, lease or other-

wise dispose of such materials and plants or any portions or parts thereof, by public or private sale or contract, with or without notice, in such lots, at such times and places, upon such credit, security and other terms or conditions, and in such manner generally as said Board, from time to time, shall deem to the best advantage of the United States.

2. I hereby direct that such sales, leases or other disposition shall be made directly by the said Board or by it, in its discretion, through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

3. I hereby direct that all acts heretofore done by said Corporation or by said Board, with reference to such sales, leases or other disposition and which could have been properly done by me under any statutes heretofore enacted covering this subject matter, be, and they hereby are ratified and confirmed.

WOODROW WILSON.

THE WHITE HOUSE, *August 11, 1919.*

Merchant Marine Act of 1920, c. 250, 41 Stat. 988, 990, 993

SEC. 2. (a) That the following Acts and parts of Acts are hereby repealed, subject to the limitations and exceptions hereinafter, in this Act, provided:

(1) The emergency shipping fund provisions of the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes," approved June 15, 1917, as amended by the Act entitled "An Act to amend the emergency shipping fund provisions of

the Urgent Deficiency Appropriation Act, approved June 15, 1917, so as to empower the President and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes," approved April 22, 1918, and as further amended by the Act entitled "An Act making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918;

(2) Section 3 of such Act of April 22, 1918;

(3) The paragraphs numbered 2 and 3 under the heading "Emergency shipping fund" in such Act of November 4, 1918; and

(4) The Act entitled "An Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other puposes," appoved July 18, 1918.

(5) Sections 5, 7, and 8, Shipping Act, 1916.

(b) The repeal of such Acts or parts of Acts is subject to the following limitations:

(1) All contracts or agreements lawfully entered into before the passage of this Act under any such Act or part of Act shall be assumed and carried out by the United States Shipping Board, hereinafter called "the board."

(2) All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (c) of this section, as if this Act had not been passed.

(3) The repeal shall not have the effect of extinguishing any penalty incurred under such Acts or parts of Acts, but such Acts or parts of Acts shall remain in force for the purpose of sustaining a prosecution for enforcement of the penalty therein provided for the violation thereof.

(4) The board shall have full power and authority to complete or conclude any construction work begun in accordance with the provisions of such Acts or parts of Acts if, in the opinion of the board, the completion or conclusion thereof is for the best interests of the United States.

(c) As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided,* That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed.

* * * * *

SEC. 4. That all vessels and other property or interests of whatsoever kind, including vessels or property in course of construction or contracted for, acquired by the President through any agencies whatsoever in pursuance of authority conferred by the Acts or parts of Acts repealed by section 2 of this Act, or in pursuance of the joint reso-

lution entitled "Joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes," approved May 12, 1917, with the exception of vessels and property the use of which is in the opinion of the President required by any other branch of the Government service of the United States, are hereby transferred to the board: *Provided,* That all vessels in the military and naval service of the United States, including the vessels assigned to river and harbor work, inland waterways, or vessels for such needs in the course of construction or under contract by the War Department, shall be exempt from the provisions of this Act.

* * * * *

SEC. 12. That all vessels may be reconditioned and kept in suitable repair and until sold shall be managed and operated by the board or chartered or leased by it on such terms and conditions as the board shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act; and the United States Shipping Board Emergency Fleet Corporation shall continue in existence and have authority to operate vessels, unless otherwise directed by law, until all vessels are sold in accordance with the provisions of this Act, the provision in section 11 of the "Shipping Act, 1916," to the contrary notwithstanding.

General Appropriation Act of June 12, 1922, c. 218, 42 Stat. 635, 647

SHIPPING BOARD

* * * * *

EMERGENCY SHIPPING FUND

For expenses of the United States Shipping Board Emergency Fleet Corporation during the fiscal year ending June 30, 1923, for administrative purposes, miscellaneous adjustments, losses due to the maintenance and operation of ships, for the tie-up, reconditioning and repair of ships, and for carrying out the provisions of the Merchant Marine Act, 1920, (a) the amount on hand July 1, 1922; (b) $50,000,000: *Provided,* That no part of this sum shall be used for the payment of claims other than those resulting from the current maintenance and operation of vessels; (c) the amount received during the fiscal year 1923 from the operation of ships.

For the payment of claims, damage charges and miscellaneous adjustments, authorized under the provisions of the Merchant Marine Act, 1920, $50,000,000, of which $30,000,000 shall be immediately available: *Provided,* That no claim shall be paid out of the amount appropriated herein unless the Shipping Board shall find that such claim grew out of an agreement, expressed or implied, entered into with United States Shipping Board or the Emergency Fleet Corporation or their legal representatives.

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1936

FILE COPY

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No. 345

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, SUED IN THE NAME OF THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

v.

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY OF GROTON IRON WORKS, AND ISAAC SIEGEL AND JOHN M. P. THATCHER, AS ANCILLARY RECEIVERS OF UNITED STATES STEAMSHIP COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY MEMORANDUM FOR THE FLEET CORPORATION

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 345

UNITED STATES SHIPPING BOARD MERCHANT FLEET Corporation, sued in the name of United States Shipping Board Emergency Fleet Corporation, petitioner

v.

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY OF Groton Iron Works, and Isaac Siegel and John M. P. Thatcher as Ancillary Receivers of United States Steamship Company

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY MEMORANDUM FOR THE FLEET CORPORATION

The supplemental brief for the respondents Siegel and Thatcher has just been served on us. This memorandum is in reply to that brief and also to certain arguments in the principal brief filed on behalf of the respondents.

REPLY TO SUPPLEMENTAL BRIEF OF RESPONDENTS SIEGEL AND THATCHER

In the brief for the Fleet Corporation it was argued (p. 18) that the Contract of March 26, 1920, was made by the Fleet Corporation as the agent of the United States, because that contract awarded "just compensation," which the Fleet Corporation had power to do only as the agent of the United States, under authority delegated by the President pursuant to the Act of June 15, 1917. In opposition to this argument, the respondents Siegel and Thatcher in their supplemental brief state (p. 6):

> The Fleet Corporation could not have been discharging the obligation of the United States, since that obligation was to make just compensation to be determined by the President, and the Fleet Corporation was never authorized to make this determination or to discharge this obligation.

This statement is contrary to the actual facts. The Act of June 15, 1917 (pp. 42–44 of our brief) expressly provided that—

> The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: * * *.

Pursuant to this authority, the President by his Executive Orders of July 11, 1917 (pp. 44–45 of our brief), and of December 8, 1918 (pp. 45–47 of our brief), the President delegated his power in this

respect to the Fleet Corporation. By the latter Order it was provided:

> The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction; * * *.

Under this authority delegated to it by the President, the Fleet Corporation did in fact hear claims and determine "just compensation" until the passage of the Merchant Marine Act, 1920, on June 5, 1920. See *Brooks-Scanlon Corp.* v. *United States*, 265 U. S. 106, 118; Annual Report of the Shipping Board, 1920, p. 173. By Section 2 (c) of the Merchant Marine Act (p. 51 of our brief) it was provided that "the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation." Thereafter, in pursuance to the provisions of the statute, awards of "just compansation" have been made by the Shipping Board.

REPLY TO BRIEF FOR RESPONDENTS

I

The respondents argue in their brief (pp. 33 *et seq.*) that it would be a great injustice to them if it should be held that the United States rather than the Fleet Corporation was the proper party de-

fendant in this action. If any doubt was entertained by counsel for respondents as to the proper party defendant, that doubt should have been dissipated by the *Russell-Freygang-Anderson cases*, 261 U. S. 514, decided by this Court in April, 1923, less than one year after the *Sloan-Astoria* decision. Freygang sued the United States *in the Court of Claims* on a contract executed by the Fleet Corporation on July 16, 1918, which called for the construction by plaintiffs of certain wood hulls and barges, and was in form similar to the earlier contracts involved in the instant case. Just prior to the Armistice the Fleet Corporation, acting under its delegated authority, canceled some of the work but permitted plaintiffs to complete some of the barges. A supplemental contract between plaintiffs and the Fleet Corporation dated April 14, 1920, attempted to settle the difference which had arisen between the shipbuilders and the Government because of the cancellation. The Court of Claims allowed a judgment *against the United States* on this settlement contract executed by the Fleet Corporation (57 Ct. Cls. 244), and this Court affirmed the judgment (261 U. S. 514). *Gilbert* v. *United States*, 60 C. Cls. 1005, certiorari denied, 271 U. S. 660, is similar.

The facts and circumstances surrounding the case at bar are analogous to those in the *Freygang case*. Respondents' complaint that they have lost their right to sue the United States in the Court of Claims because of misinterpretation of the effect of

the *Sloan-Astoria* decision does not seem convincing in view of the *Freygang case*, which held that the remedy of claimants for obtaining redress on war contracts and transactions of the Fleet Corporation was by suit against the United States in the Court of Claims.

II

Even though the respondents are now precluded from seeking relief in the Court of Claims, the record does not disclose that Groton has lost substantial rights, and in view of the fact that respondents seek to make it appear that an affirmance of the decree of the District Court will produce an unjust result, it seems fair to refer here to other proceedings which are referred to but not explained in full in the record.

In transactions connected with the contracts here involved, Groton executed mortgages to the Fleet Corporation (R. 219, 220) to secure advances and payments. On March 1, 1920, the principal amount secured by these mortgages totalled $1,716,666.67. (R. 77.) The accumulated interest up to the present time approximates $1,000,000. In 1923 these mortgages were assigned to the United States. (R. 222.) The United States brought an action to foreclose these mortgages. (R. 97.) While it does not appear in the record, it is a fact that the mortgaged property was sold, and the proceeds of the sale amounted to less than $95,596.67. This sum is

now being held by the District Court of Connecticut to await the outcome of this suit.

Consequently if the Fleet Corporation be required to enter into an accounting with Groton in accordance with the decree of the Court below, it seems probable that it will be precluded from setting off the mortgage debt, because it has been duly assigned to the United States by a written assignment (R. 222) as well as being transferred by law. (Sec. 4, Merchant Marine Act, 1920; see p. 51 of Brief for Fleet Corporation.)

Thus, if the decree of the Circuit Court of Appeals is affirmed, there may be a decree for the respondents on the accounting, because the Fleet Corporation could not offset the mortgage debt, and the money paid in compliance with this decree will be general assets of the bankrupt estate. The United States will hold an uncollectible deficiency judgment against Groton on the mortgage debt. We submit that Congress could not have contemplated a result so incongruous and so unjust to the Government.

III

In the brief for the Fleet Corporation we contend (pp. 34–38) that, whoever may have been bound originally by the contracts in question, this liability has been assumed by the United States, and that Congress by Sections 2 (b) and 2 (c) of the Merchant Marine Act, 1920 (set out on pp. 50–51 of the brief for the Fleet Corporation), provided

an exclusive remedy for the enforcement of the liability. But the respondents contend (p. 45 of their brief) that "if such be the interpretation to be placed upon the proviso of subdivision (c), its effect is completely to destroy the preservation of the remedies attempted to be preserved by paragraph (2)."

The two subsections must be construed together. Although their provisions are not wholly explicit, we submit that the Congressional intention may be readily ascertained by reference to other sections of the Act. The reason for the declaration in Section 2 (b) (2) that "all rights, interests, or remedies" and "any action taken" "shall be in all respects as valid, * * * subject to the provisions of subdivision (c) of this section, as if this Act had not been passed" is plain. Section 2 (a) of this Act repealed the prior Acts, including the Emergency Shipping Fund provisions of the Act of June 15, 1917. The provisions of Section 2 (b) (2) just quoted were consequently inserted, because the repeal of the former Acts was not intended to affect the validity of the contracts executed, the actions taken and the interests acquired under them.

The situation is similar as to "remedies." The remedies which Congress intended to preserve were those accruing to the United States under the former contracts, agreements, and actions taken, including the right of the United States to sue for breach of such contracts, to enforce penalties and collect liquidated damages, and to recover moneys

unlawfully paid under such contracts. The remedies preserved to claimants were the right to sue the United States on the contracts, and the right to claim and sue for just compensation for modification, suspension, and cancellation of such contracts.

Congress took away from the Fleet Corporation all authority over the contracts, directed the Shipping Board to assume them and carry them out and stripped the Fleet Corporation of all assets acquired under the contracts. (Sec. 4, Merchant Marine Act, 1920; pp. 51–52 of our brief.) Suppose that a contract had been executed by the Fleet Corporation *before* June 5, 1920, and the breach complained of occurred *after* the Shipping Board started to carry out the contract. Would the Fleet Corporation be liable? Could it be held for damages occasioned by the breach of the Shipping Board (*i. e.*, the Government), that being a breach over which the Fleet Corporation had no control? Yet, if respondent's theory is correct, it is the corporation's promise that has been broken and a remedy against that agent that has been preserved.

From what source could the Fleet Corporation obtain the money to pay any judgment that might be rendered in this case? Not from its capital-stock fund. That money was all spent prior to the end of 1917. (R. 242, 244.) Not from any assets received while acting as the President's agent. Such assets were transferred to the Shipping Board. Is it possible that Congress intended by

Sections 2 (b) (2) and (c) to preserve a naked right to obtain a judgment against an agent who possesses no means for satisfying such a judgment? As we have pointed out in our brief (pp. 36-37), it seems clear that Congress had no such futile purpose. Congress not only provided a remedy against the United States but by the General Appropriation Act of June 12, 1922 (the pertinent provision is set out at p. 37 of our brief) it made provision for satisfying these claims *against the United States.*

That Congress intended by the Merchant Marine Act to take away the activities under the war legislation from numerous agencies, including the Fleet Corporation, and to substitute for these agencies the Shipping Board is clearly indicated by the Report of the Committee on Merchant Marine and Fisheries to the House, accompanying H. R. 10378, which later became the Merchant Marine Act, 1920. This Report (House Rep. 443, 66th Congress, 1st Session, p. 1) stated in part:

> The committee found that in order to establish regularity in the future conduct of the numerous different shipping activities, operated either by order of the President through emergency legislation or by the original shipping act, it would be necessary to concentrate all of these operations under one authority, repealing such legislation rendered unnecessary by the ending of the war and providing new legislation for the operation and handling of the property acquired. With this in

> view the bill (H. R. 10378) has for effect, first, the repealing of the various bills containing legislation in connection with the upbuilding of the merchant marine, together with the bills containing the unusual powers granted to the President and which were essential for successful operation during the war; and it transfers all the powers necessary for its liquidation, construction, or operation to the Shipping Board, fixing the scope of the Shipping Board's powers so that they can absorb all of these activities. These provisions are contained in sections 1 and 2 of the bill.

IV

Several minor matters deserve brief mention.

The respondents state in their brief (p. 7) that "Each of the contracts involved in this case is identical in form and substance with those" construed in the *Sloan-Astoria Cases*, 258 U. S. 549. As we have pointed out (p. 14 of our brief) the form of the contract of March 26, 1920 (R. 75) was materially different from any involved in the *Sloan-Astoria Cases*. In this connection it may be pointed out that the Record shows (R. 226 *et seq.*) that Groton knew it was dealing with the Government.

The respondents state in their brief (p. 30):

> In *Providence Corporation* v. *Downey Shipbuilding Corporation*, 294 Fed. 641 (certiorari denied 264 U. S. 586), and in *Smith* v. *Fleet Corporation*, 26 Fed. (2d)

> 337 (certiorari denied 278 U. S. 628) the same Circuit Court of Appeals [2d] again held that the substantive rights and liabilities of the Fleet Corporation under contracts executed in its own name, although acting for the United States, were those of a principal.

Reliance is then placed on the fact that this Court denied certiorari in these cases. But an examination of these cases shows that neither supports respondents' contention. *Smith* v. *Fleet Corporation* arose out of the activities of the Fleet Corporation in operating ships and has no bearing on the effect of contracts for the construction of ships; and, although the language in *Providence Engineering Corporation* v. *Downey Shipbuilding Corporation* is broad, the actual decision did not impose any liability on the Fleet Corporation.

We submit that respondents are in error in their attempt (p. 32 of their brief) to distinguish *United States* v. *Skinner & Eddy Co.*, 35 F. (2d) 889 (C. C. A. 9th) from the earlier decision in the same Circuit in *United States* v. *Matthews*, 282 Fed. 266. It is true that "the *Skinner & Eddy case* was between the United States and the contractor, not between the Fleet Corporation and the contractor, and the claim asserted by the contractor being for just compensation on account of the cancellation of his contract, was exclusively cognizable by the Court of Claims." The same is true of *United States* v. *Matthews*. Both cases were suits by the United States and not by the Fleet Corporation.

The respondents suggest (p. 47 of their brief) that there may be doubt as to the constitutionality of the Merchant Marine Act if it is interpreted to provide an exclusive remedy against the United States in place of a former remedy against the Fleet Corporation. But the prohibition against laws impairing the obligations of contracts does not apply to the United States. *Sinking Fund Cases*, 99 U. S. 700, 718. And it can not be a denial of due process of law to substitute the liability of the United States for that of one of its creatures, wholly owned by the United States.

Respectfully submitted.

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APRIL, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930

No. 345

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CHARLES ELMORE CROP
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, sued in the name of the UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

Petitioner,

v.

P. LEROY HARDWOOD, as Trustee in Bankruptcy of GROTON IRON WORKS

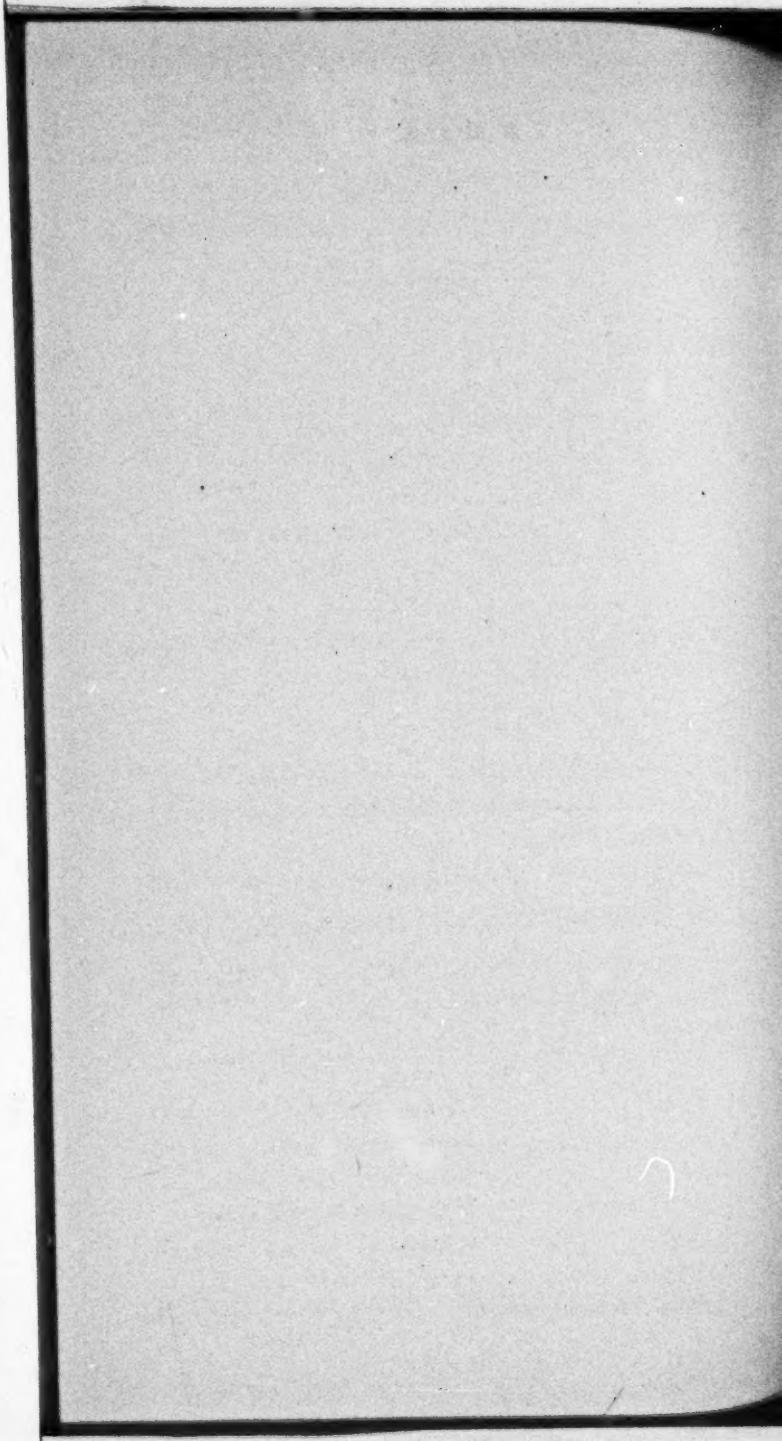
and

ISAAC SIEGEL and JOHN M. P. THATCHER, as Ancillary Receivers of United States Steamship Co., Intervenors,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

FREDERICK H. WOOD,
HERBERT B. LEE,
W. H. L. EDWARDS,
WILLIAM W. ROBISON,
Attorneys for Respondents.



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ISAAC SIEGEL and JOHN M. P. THATCHER, as Ancillary Receivers of United States Steamship Co., Intervenors,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The Question Presented.

The Emergency Shipping Fund provisions of the Urgent Deficiencies Act of June 15, 1917 (40 Stat. 182)

authorized the construction of ships at a cost not to exceed $500,000, and empowered the President (1) to place orders therefor, and (2) to exercise the powers conferred through such agency or agencies, as he might determine. By executive order dated July 11, 1917 the President delegated to the Emergency Fleet Corporation the powers so conferred in so far as applicable to the construction of vessels, and by further executive order of December 3, 1918 confirmed such delegation and ratified all acts theretofore done thereunder.

The question presented is:

I. Did the Fleet Corporation in the contracts in suit, made in its own name in connection with the construction of vessels under the authority of such executive orders, execute such contracts as principal and is it liable as such thereon?

SUMMARY STATEMENT OF REASONS WHY PETITION SHOULD BE DENIED.

1. The question, although one of public importance, has already been settled by this court adversely to the petitioner.

The public importance of the question may be admitted but it is a question which has already been answered in the affirmative by this court in *Sloan Shipyards* v. *Fleet Corporation,* 258 U. S. 549 and in *United States* v. *Wood,* 263 U. S. 680 in which the contracts reviewed were altogether similar in form and substance.

It is said, however, that the Circuit Court of Appeals misinterpreted the decision of this court in the

Sloan case; that all that was therein decided was that the Fleet Corporation was suable on such contracts; that the question of liability thereunder was not determined; and that the Fleet Corporation, although suable on such contracts in its own name, was not liable, because it contracted as agent and not as principal, and the contract was that of the United States and not of the Fleet Corporation. The latter argument is based entirely on the supposed legal effect of the executive orders of the President. But the legal effect of such orders was before the court in the *Sloan* case and decided therein, and an examination of the argument of the Fleet Corporation in that case, as contained in the official report, shows that every argument now presented was pressed upon the Court in that case. Furthermore, as will appear from the accompanying brief, the question presented in one of the cases decided in the *Sloan* case (*Fleet Corporation* v. *Wood-Eastern Shore* case) was one of the substantive rights and obligations created by the contract and not of the capacity of the Fleet Corporation to sue or be sued. And the essence of the decision in the other two cases was that, although acting under the authority of these executive orders, the Fleet Corporation acted as principal and not as agent for the United States, when it contracted as such in its own name, and hence was suable on the contracts so made. That is to say, it was suable because the contracts were its contracts, by which it was bound as principal. Subsequently, in *United States* v. *Wood*, 263 U. S. 680, the Court affirmed, upon the authority of the *Sloan* case, a decision of the same Circuit Court of Appeals to which *writ of certiorari* is now sought (290 Fed. 109, 111, 115-6), wherein the question

again was one of substantive right and not of capacity to be sued, and wherein the Circuit Court of Appeals placed the same interpretation upon the *Sloan* case as in this case. Still later, in *Providence Engineering Corporation* v. *Downey Shipbuilding Corporation*, 294 Fed. 641, and in *Smith* v. *Fleet Corporation*, 26 Fed. (2d) 337, in which the same Circuit Court of Appeals placed the same interpretation upon the *Sloan* case, in cases involving substantive rights and not capacity to sue or be sued, this Court denied certiorari (264 U. S. 586, 273 U. S. 747). It is therefore respectively submitted that the question presented, while one of public importance, is one already settled by this court, and should not be further reviewed.

2. There is no conflict between the decision of the Circuit Court of Appeals and that of another Circuit Court of Appeals.

Petitioner cites *Fleet Corporation* v. *Galveston Drydock Company*, 13 Fed. (2d) 607 (5th C. C. A.) as in conflict. An examination of that opinion discloses that the contract reviewed showed, on its face, that it was not the contract of the Fleet Corporation, but of the Shipping Board, and in the last paragraph of the opinion it is expressly stated that the question of the Fleet Corporation's liability on contracts made in its own behalf as principal is not presented. The same court in *Fleet Corporation* v. *South Atlantic Drydock*, 300 Fed. 56, held that under such a contract the Fleet Corporation was personally liable, thus interpreting the *Sloan* case as interpreted by the Circuit Court of Appeals in this case. To the same effect are the decisions of every other Circuit Court of Appeals which has passed upon the question. *United States* v. *Mathews*, 282 Fed.

266 (9th C. C. A.), *Banque-Russo-Asiatique-London* v. *Fleet Corporation,* 286 Fed. 918 (3d C. C. A.), *Shooters Island Shipyard Co.* v. *Standard Shipbuilding Corporation and Fleet Corporation,* 293 Fed. 706, 3 Fed. (2d) 1022 (3d C. C. A.), *Fleet Corporation* v. *Rosenburg Bros. & Company,* 12 Fed. (2d) 721 (9th C. C. A., reversed on other grounds, 276 U. S. 202), *Cohn* v. *Fleet Corporation,* 20 Fed. (2d), 56 (6th C. C. A.), *Fleet Corporation* v. *Tabas,* 22 Fed. (2d) 398 (3d C. C. A.). See also the decision of the 2nd Circuit in *Dietrich* v. *Fleet Corporation,* 9 Fed. (2d) 733, and that of the Court of Appeals of the District of Columbia in *Eichberg* v. *Fleet Corporation,* 273 Fed. 886, 14 Fed. (2d) 248. Only one case to the contrary is cited by the petitioner, *Astoria Marine Works* v. *Fleet Corporation,* 259 Fed. 415, decided by the District Court of Oregon, and which is clearly in conflict with the decision cited above from the Ninth Circuit, as well as with the decisions of this court in the *Sloan* and *Wood* cases. To the same effect are the decisions of various district and state courts cited in the margin.*

In light of the unanimous decisions of the Circuit Courts of Appeals and District Courts in the cases cited, with the single exception of the District Court case cited by the petitioner, the following statement on page 7 of the petition cannot be sustained:

> "Since the decisions of this Court in the *Sloan* and *Astoria cases* (258 U. S. 549), in 1922, there

*Florida Grain & Elevator Co. v. Fleet Corporations, 300 Fed. 169 (D. C., S. D. Fla.); Haines v. Lone Star Shipbuilding Co. (Fleet Corporation, Garnishee) 268 Pa. 92, 110 Atl. 788; Cox v. Lykes Bros. and Fleet Corporation, 237 N. Y. 376, 382; Traylor Engineering & Mfg. Co. v. Fleet Corporation, 277 Fed. 248 (D. C., E. D. Pa.); Wright v. Fleet Corporation, 285 Fed. 647 (D. C., S. D. N. Y.).

has been a widespread difference of opinion in the minds of the bench and bar as to the effect of those decisions."

3. A qualification of the Sloan case, as sought by the petitioner would result in a miscarriage of justice in this and other cases.

If the contracts were those of the Fleet Corporation as principal, the liabilities created thereby were those of the Fleet Corporation, enforcible only in the State or District Courts. If, on the other hand, the contention of the petitioner is sound, the United States alone was bound. In such event, exclusive jurisdiction was in the Court of Claims, in which suit by the respondent is now barred by the statute of limitations.

Section 154 of the Judicial Code (United States Code, Title 28, § 260, R. S. § 1067, March 3, 1911, c. 231, § 154, 36 Stat. 1138) provides as follows:

> *"Claims pending in other courts.* No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States."

Under this statute, any lawyer representing a client having claims arising under contracts similar to the contract in suit was therefore compelled to determine whether the liability was that of the Fleet Corporation,

upon which suit should be brought in the District or State Courts, or that of the United States, upon which suit must be brought in the Court of Claims. He could not, by reason of the prohibition of this statute, pursue both remedies concurrently.

In the Sloan case, decided May 1, 1922, the Court said that the conclusion reached was "led up to and almost required by the decisions heretofore reached in *The Lake Monroe,* 250 U. S. 246, and *United States* v. *Strang,* 254 U. S. 491," in each of which the question was one of substantive law and not of the capacity to sue or be sued. Subsequently, and in the same year, in *United States* v. *Mathews,* 282 U. S. 266, the Circuit Court of Appeals for the Ninth Circuit interpreted the Sloan case as it has been interpreted by the Circuit Court of Appeals in this case, and held further, that despite the relation of the United States to such contracts, it could not itself sue thereon. If so, it was not, of course, suable thereon. In the following year in November, 1923, the decision of this Court in *United States* v. *Wood, supra,* was handed down, affirming the same Circuit Court of Appeals to which this *writ of certiorari* is sought, in holding that in such contracts the Fleet Corporation acted as principal. In 1924 this Court denied a *writ of certiorari* to review a similar decision by the same Circuit Court of Appeals in *Providence Engineering Corporation* v. *Downey Shipbuilding Corporation* (264 U. S. 586).

There have followed successively the multitude of cases in the District Courts of the United States and

in the Circuit Courts of Appeals cited above. Under these circumstances it is plain that any lawyer, presented with the necessity of electing between suing the Fleet Corporation in the District Court or suing the United States in the Court of Claims, and who had regard for the decisions of this and other courts, had no choice but to sue the Fleet Corporation in the District Court.

As stated, the statute of limitations against the bringing of suit in the Court of Claims has expired during the pendency of this case. It is said in the petition that there are other cases pending, involving the same question between other contractors and the Fleet Corporation. In view of the time that has elapsed since the conclusion of the War, it is fair to assume that the statute of limitations has likewise run in all such cases. The effect of a reversal on *certiorari*, if granted, would therefore be to permit both the Government and the Fleet Corporation, in this case and in all other cases now pending and growing out of the construction of ships contracted to be built by the Fleet Corporation when acting under the executive orders of the President, to escape all liability except upon such settlement of the amounts in dispute as the Government is willing voluntarily to make. Such a result would bring about a substantial and a shocking miscarriage of justice, due not to any failure of counsel representing such claimants to proceed in accordance with the law as repeatedly declared, but to their failure to anticipate a qualification of previous decisions which in numerous cases has been expressly rejected.

We are not unmindful that it is suggested in the petition that a paragraph from the dissenting opinion of the Chief Justice in the *Sloan* case is suggestive of a possible qualification of that decision. An examination of the dissent discloses that it was based entirely upon the theory that the effect of the decision was to hold the Fleet Corporation liable on contracts made in its own name and not merely suable thereon. It is true that the Chief Justice states that if it decided the latter only, the question discussed in the dissent does not arise, but the very sentence in which this language is contained indicates that in the opinion of the Chief Justice the point to which the dissent was directed, namely, the liability of the Fleet Corporation, "seems * * * to be in these cases." Furthermore, after the decision of this Court in *United States* v. *Wood, supra,* and after its denial of petition for *certiorari* in *Providence Engineering Company* v. *Downey Shipbuilding Corporation, supra,* in each of which the question was one of substantive right and not of capacity to sue, the Bar was certainly justified in assuming that any doubt or uncertainty arising from this language in the dissenting opinion had been completely removed.

It is respectfully suggested that if the decision in the *Sloan* case is to be qualified or limited, as asserted by the petitioner, such qualification or limitation would have either been made in that case or in the cases which followed, and that now so to qualify the Sloan case would be to work such hardship and injustice as in itself to justify a denial of the writ.

ARGUMENT.

THIS CASE IS IN NO WAY DISTINGUISHABLE FROM SLOAN SHIPYARDS v. FLEET CORPORATION, 258 N. S. 549, AND UNITED STATES v. WOOD, 263 U. S. 680, IN WHICH THE FLEET CORPORATION WAS HELD TO HAVE CONTRACTED AS PRINCIPAL.

1. The contracts involved were the same in form and substance as those reviewed in the Sloan and other cases, and there held to have been executed by the Fleet Corporation as principal, and not as agent.

Three cases were dealt with in a single opinion in the *Sloan* case. In each of the contracts reviewed the Fleet Corporation contracted in its own name. All the obligations of the contractor ran to the Fleet Corporation, and all obligations running to the contractor were assumed by the Fleet Corporation in its own name. As disclosed by the opinion, wherever the United States is mentioned the contract on its face clearly distinguishes between the Fleet Corporation and the United States. In two of the contracts the Fleet Corporation was described as "representing the United States of America". The Court held that despite this recital, it clearly appeared from the contracts, and from the mutual obligations created thereby, that the contracts were those of the Fleet Corporation as principal and not executed by it on behalf of the United States as agent. Each of the contracts in suit is similar in form and substance to those reviewed in the *Sloan* case.

In the courts below five contracts were involved, three construction contracts, a contract modifying the first construction contract, and supplemental thereto, and a contract made in settlement of the disputes which had arisen under all of the preceding four contracts. The statement that the last named contract is the only one involved in this petition for *certiorari* is erroneous. This statement is apparently based upon the fact that the court below held that there was no ground for setting aside the settlement contract upon the ground of fraud or duress, as asserted by the respondent, hence the accounting sought must be made under the settlement contract. The settlement contract (fols. 354-402, R. 118-134) in Article XVII (R. 133, fol. 399) expressly provided that it should be supplemental to the three construction contracts which had preceded, and that except as otherwise provided, the provisions of said contracts and their supplements should remain in full force and effect. The provisions of these contracts as well as the settlement contract must therefore be considered. Furthermore, as held by the Circuit Court of Appeals, the Fleet Corporation obviously acted in the same capacity in executing the settlement contract as in executing the construction contracts to which it was expressly made supplemental. Obviously, if it contracted as principal in the construction contracts, it was contracting as principal in the settlement of the disputes arising thereunder, and in the execution of contracts supplemental thereto, the original contracts to remain in force except as modified by the settlement contract itself.

The first two construction contracts.

The first two construction contracts, (Exhibits 1 and 3, R. 58 *et seq.*, fols. 174 *et seq.* and R. 76, fols. 228 *et seq.*) were made by the Fleet Corporation in its own name as the owner for whom the vessels were to be constructed. All the obligations of the contractor run to the Fleet Corporation described as the "Owner", and all obligations running to the contractor are assumed by the Fleet Corporation in its own name as principal. The only mention of the United States is in a provision common to both (fols. 190-191, 248-250) defining the rights of the contractor in the event of "delay * * * of the 'Owner' or by reason of alterations or additions by the 'Owner' or the commandeering by the United States Government of materials purchased etc."

The third construction contract.

In the third construction contract (Ex. 4, R. 93 *et seq.*, fols. 277 *et seq.*), the Fleet Corporation is recited as a corporation organized under the laws of the District of Columbia, "herein called the Owner, representing the United States of America, party of the second part". Petitioner in its brief relies on this recital and a similar recital in the settlement contract as indicating that the Fleet Corporation acted as agent for the United States and not as principal. In respect of a similar recital, this Court in the *Sloan* case said:

> "We attach no importance to the fact that the second contract [in the Sloan Shipyards case]

> alleged to have been illegally extorted was made by the Fleet Corporation 'representing the United States of America.' The Fleet Corporation was the Contractor, even if the added words had any secondary effect."

In the same case, in respect of a contract of the *Astoria Marine Iron Works*, containing a similar recital, this Court said:

> "* * * throughout the contract, the undertakings of the party of the second part, are expressed to be undertakings of the Corporation, and it is this Corporation and its officers that are to be satisfied in regard to what is required from the Iron Works. It is recognized that it may be necessary for the United States to exercise complete control over the furnishing of supplies to the Iron Works and it is agreed that if required by the Corporation 'and/or the United States,' the Iron Works will furnish schedules, etc., etc. The whole frame of the instrument seems to us plainly to recognize the Corporation as the immediate party to the contract. The distinction between it and the United States is marked in the phrase last quoted. * * *"

This contract has the same characteristics as the first two contracts, in which the United States is not mentioned, and as the contracts dealt with in the *Sloan* case. All obligations of the contractor run to the "Owner" (the Fleet Corporation) and all obligations running to the contractor are assumed by the "Owner" (the Fleet Corporation) in its own name as principal. As in the *Astoria* case, clear distinction is made in the contract itself between the owner or

Fleet Corporation and the United States, wherever rights or obligations of the parties depend upon any action of the United States as distinguished from that of the owner. An analysis of this contract may be found in the margin.*

*The contract is made in the name of the Fleet Corporation, executed by it in its own name under its corporate seal. As in the *Astoria* case, "throughout the contract the undertakings of the party of the second part are expressed to be undertakings of the Corporation," designated as the "Owner". It is the Owner who "agrees to pay" $1,710,800 for each completed vessel; "to use its best efforts to cause to be furnished * * * to the contractor certain steel material * * * at the basic prices" indicated in a schedule attached to the contract; to make payments and advances to the contractor in the manner stipulated; and to reimburse the contractor for certain designated expenditures, title to the money deposited and against which the contractor may draw to "remain in the Owner" (fols. 282-289). The Owner also "agrees to cause to be furnished to the contractor the materials and equipment" designated in another schedule attached to the contract and at the prices therein shown, the Owner to be entitled to any saving by purchase at prices which are less (fol. 292). The Owner is to bear any increased cost due to advances in wages or freight rates, and is to be entitled to the benefit of wage reductions (fols. 293-294); is to bear any increased cost due to authorized alterations, and is entitled to the benefit of any decreased costs resulting therefrom (fols. 300-301). The Owner will pay a premium for advanced delivery and is entitled to liquidated damages for delay in delivery (fols. 312-313) and payments under the contract are to be made by the Owner's check (fol. 338).

The undertakings of the contractor, in turn, run to the Owner (the Fleet Corporation) and not to the United States, and it is the latter and not the former that is to be satisfied with the performance of the contract. The contractor's plans and specifications must be approved by the Owner, and it is the Owner to whom the contractor agrees to make delivery (fols. 281-282), but "before final acceptance * * * by the Owner the contractor shall make a dock trial and a sea trial," the results of which are to be satisfactory to "the Owner's representative" (fol. 290). The contractor shall extend to the Owner every facility for inspection of work (fol. 291), plant and books (fols. 297-298) and the inspectors of the Owner may reject materials or workmanship (fols. 291-292). The contractor will maintain insurance as the Owner may require, the loss, if any, to be "payable to the Owner for the use of the Owner and/or the contractor, as their respective interests may appear" (fol. 299). The Owner may require alterations (fol. 300). Progress of the work must at all times be satisfactory to it (fol. 305). The vessels are to be delivered to the Owner free and clear of all liens and to be accompanied upon delivery by all documents necessary or convenient "to confer upon the Owner a full and unencumbered title to such vessels" and before any payment is made the Owner may require proof concerning, or indemnity against claims of various descriptions (fols. 314-319) and is to be protected by the contractor against any claims arising from accidents or casualties, patent infringements, etc. (fols. 320-321).

As in the Astoria contract, "the distinction between it [the Fleet Corporation] and the United States is marked" in the contract itself. In case of obstruction to the work "by the delay, neglect or default of the Owner or by reason of alterations or additions by the Owner, or the commanderr-

As again indicating the distinction between the United States and the Fleet Corporation, in each of the three construction contracts, it was provided that the contract might not be assigned without the consent of the "Owner" (Fleet Corporation), but that payments due or to become due might be assigned for the purpose of obtaining credit for further construction (fols. 204, 265, 324). Of these provisions the first would have been superfluous if the contract were with the United States, and the second void (R. S. 3737, 3477).

The first supplemental contract.

On September 30, 1918 the first construction contract was modified by a supplementary contract (fols. 207-227). As stated, the contract to which it was supplemental and which it modified was made by the Fleet Corporation in its own name and without any mention of the United States. In the absence of clear intent to the contrary, it must be assumed that in making this supplementary contract, which provided among other things that the original contract "except as hereinafter modified, is in full force and effect", the Fleet Corporation contracted in the same capacity. This conclusion is reen-

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ing by the United States Government of materials the time of delivery shall be extended (fols. 201-203). In case of delay, the Owner may take possession of the shipyard, vessels, etc., and the Owner shall thereupon cause to be taken and filed with the *United States Shipping Board* a full and complete statement and inventory." Title to the vessels, "insofar as they shall have been inspected and approved by the *Owner*, shall be in the *United States of America*, but title to materials for use in the work shall be in the *Owner* at all times" (fol. 307). The contractor is to give precedence in its plant to the work under this contract "subject only to the prior rights, if any, of a *Department of the United States of America*" (fol. 311) and agrees to comply with all the laws, rules, etc., of the *Departments of the United States* and to procure "all permits from the *United States*, State and local authorities" and to comply with "*United States*, State and local laws in any way affecting the work" (fols. 331-332).

forced from an examination of the contract itself. As in the *Astoria* case, no significance attaches to the fact that the Fleet Corporation is recited in the preamble as "representing the United States". Other than this, the contract contains no reference to the United States, and the rights and obligations as in the preceding contracts are expressed to be those of the Fleet Corporation as the owner.

The settlement contract.

Disputes having arisen under these several contracts, a second settlement contract was entered into on March 26, 1920. (Ex. 5, fols. 354 *et seq.*) This contract is described as supplemental to the preceding contracts (fol. 399) and modifies the rights and obligations of the parties thereunder.

This contract is recited to be between Groton Iron Works, party of the first part, and the "United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America (hereinafter referred to as the Owner), party of the second part" (fol. 354). Immediately following this designation, it is recited that the contractor has been engaged in constructing vessels "for the Owner" under certain contracts (fols. 355-356), which the Owner is willing may be modified (fol. 358), and in the body of the contract it is provided, among other things, that for the considerations named the Owner shall be released from all existing obligations under pre-existing contracts

(fols. 365-366), but that the contractor shall be bound by all valid existing obligations of the receivers to the Owner, except as modified by the Agreement (fol. 364), and that as against the payments to be made under this settlement contract, the Owner shall be credited with all payments heretofore made (fols. 374, 377), and shall "forthwith be credited with all proper credits heretofore accrued under the pre-existing contracts" (fol. 381), all payments heretofore made by the Owner to the contractor or to the receivers to be credited upon the amounts due under this settlement contract (fol. 389). These and other provisions make it plain that, whatever ambiguity might otherwise arise by reason of the position of the words "hereinafter referred to as the Owner" in the description of the parties at the beginning of the contract, it is the Fleet Corporation which is designated as the Owner. The contracts referred to in the preamble as being with the Owner, were contracts between Groton and the Fleet Corporation. The obligations of the Owner, released by this settlement contract, were the obligations of the Fleet Corporation arising under such preceding contracts and the payments theretofore made by the Owner, for which it was to receive credit on the payments to be made under the settlement contract, were payments made by the Fleet Corporation under such existing contracts. Moreover, no other conclusion is consistent either with the purpose of the contract or the circumstances under which it was executed. The purpose of the contract was to modify the previously existing contracts reviewed above, made by the Fleet Corporation as principal, to discharge the Fleet Corporation and the

contractor from certain obligations created thereby, and to create others in their place. In the absence of a clearly expressed intent to the contrary, it must therefore be presumed that this settlement contract was executed in the same capacity as those which it modified and to which it was supplemental, a conclusion which is re-enforced by the provision in the settlement contract itself, that "except as herein otherwise provided, the provisions of the said contracts and supplements thereto shall remain in full force and effect" (fol. 399). As in the other contracts reviewed, the undertakings of the party of the second part are those of the Fleet Corporation as Owner, and the obligations of the contractor likewise run to it and not to the United States. The Owner (the Fleet Corporation) is to pay the actual cost of the uncancelled vessels, "any amount of money in excess of that to be furnished by the Fleet Corporation needed to complete the said vessels" to be furnished by the contractor (fol. 381). As in the other contracts reviewed, wherever the United States is mentioned (fols. 368, 392-393) the phraseology of the contract itself distinguishes between the United States and the Fleet Corporation, described either by name or as the Owner.

The statement in the brief supporting the petition (p. 25) that paragraph (*e*) of Article II (R. 122) allowing the contractor $500,000 in settlement of "all obligations of the owner to the contractor, or to the receivers, arising out of the suspension and cancellation of the three hulls, 10 to 12 inclusive, under Contract 225 S. C., is an agreement which must have been made by the United States as Owner", is wholly untenable. Paragraph XVIII of Contract 225 S. C. (R. 111-112, fol. 335) expressly pro-

vided that the contractor should be reimbursed for losses sustained by such cancellation. Paragraph (*e*) of Article II of the settlement contract was therefore made by the Fleet Corporation in settlement of the obligation which it assumed under this clause in a contract which, as has been previously established, was entered into by it as principal. Nor is it clear why, as the Petitioner argues, the Fleet Corporation was not competent to agree in its own behalf, as in paragraph 2 of Article III, to deliver a wooden ship, a wooden hull and certain materials as compensation for the cancellation of three wooden hulls under the first construction contract, whether it then owned such articles or not. As to the materials, its obligation in that regard extended only to "such items as the Owner [the Fleet Corporation] shall have in stock."

The fact that in this, as in all other provisions of the contract, it was acting as principal, and that "owner" means the Fleet Corporation and not the United States, is further borne out by the release clause (Article XII, p. 131), in which the contractor releases both the Fleet Corporation and the United States, by reason of matters arising under such contract, except, of course, as qualified by Article XVI (R. 133), providing that the earlier contracts shall govern, except as expressly modified. That is to say, the Fleet Corporation as owner made a settlement of its own claims and obligations arising as owner under the preceding contracts, except to the extent that they remained unmodified and at the same time took a release for the United States, as a separate entity.

2. That the Fleet Corporation in executing contracts in its own name, which are on their face contracts of the Fleet Corporation as principal, was acting under authority of executive orders of the President under the Emergency Shipping Fund provisions of the Urgent Deficiencies Act, is immaterial.

The argument in the brief accompanying the petition is addressed entirely to the proposition that because it is said that the Fleet Corporation was acting under these executive orders, the contracts, notwithstanding their form and substance, were entered into by it as agent of the United States and not as principal. The effect of these executive orders was before this Court in the *Sloan* case, in *United States* v. *Wood*, 290, Fed. 109, affirmed (*per curiam*) 263 U. S. 680. In both cases it was held that since the contracts were in form and substance those of the Fleet Corporation, the fact that it was acting under these executive orders of the President did not render them contracts of the United States.

3. This case is not distinguishable from Sloan Shipyards v. United States, or United States v. Wood, upon the ground that all that was determined therein was that the Fleet Corporation was suable on such contracts so made.

This contention, besides being based upon an unwarranted distinction between suability and liability, is in direct conflict with what was actually decided in the *Sloan* case. The argument of the Fleet Corporation in that case was that the Fleet Corporation was not liable because it acted as agent only, that the United States was the real party in interest, and that the contracts in ques-

tion were contracts of the United States and not of the Fleet Corporation. The Court held that the contracts were the contracts of the Fleet Corporation, executed by it as principal, and not contracts of the United States, from which it follows that the Fleet Corporation is liable as principal on contracts similarly made.

The first of the three cases decided in the *Sloan* case (the Sloan case itself) was a suit, among other things, to set aside a contract alleged to have been extorted by the Fleet Corporation. The Fleet Corporation, in addition to claiming that the Fleet Corporation acted as agent, asserted that the United States was a necessary party to the suit, because the real party in interest. The Court ruled adversely, holding that the contract was that of the Fleet Corporation and that hence plaintiff could maintain suit to set it aside against the Fleet Corporation as principal.

The second case (the *Astoria Marine Iron Works* case) was a suit for breach of a contract made by the Fleet Corporation, "representing the United States of America." The Court held that the Fleet Corporation, although acting pursuant to executive orders made in furtherance of the Act of June 15, 1917, contracted as principal and could be sued thereon. That is to say, it held that it could be sued on such contract because, being the principal therein, it was liable thereunder.

In respect of the third case (the *Eastern Shore* case) the Court said:

> "The third case, as we have said, is a claim of priority in bankruptcy. It was asserted against the estate of the Eastern Shore Shipbuilding Corporation, in the District Court for the Southern

> District of New York, under a contract similar to that last described, made by that company with the Fleet Corporation 'representing the United States of America' to construct 6 harbor tugs. The claim was presented by the Fleet Corporation in its own name, but was put forward by it as the instrumentality of the Government of the United States. It was denied successively by the Referee, the District Court and the Circuit Court of Appeals, on the ground that the Fleet Corporation was a distinct entity and that, whatever might be the law as to a direct claim of the United States, the Fleet Corporation stood like other creditors and was not to be preferred. 274 Fed. 893. *The considerations that have been stated apply even more obviously to this case. The order is affirmed.*" (Italics ours.)

The question in that case was one of substantive right and not of the capacity of the Fleet Corporation to be sued, and it was because the Fleet Corporation was held to have contracted as principal and not as an agent of the United States that the preferences accruing to the latter were denied. Although it has been since held that such preferences extend only to claims for taxes (*Davis* v. *Pringle*, 268 U. S. 315), and although the three dissenting Justices concurred in the decision in the *Eastern Shore* case alone on this ground, the majority of the Court did not put its decision on such ground but upon the ground that the Fleet Corporation was the principal in the contract.

The decision in each of the cases decided in the *Sloan* case, therefore, rested upon the proposition that the Fleet Corporation executed the contracts in question

as principal. The facts and the applicable law in this case are altogether similar, and the Fleet Corporation, having executed the contracts as principal, although acting as an agency of the United States, is liable thereon, even under the rule of *Hodgson* v. *Dexter,* 1 Cranch. 345, and *Parks* v. *Ross,* 11 How. 362, relied on by the petitioner to distinguish this case from the *Sloan* case.

Subsequently, in *United States* v. *Wood, supra,* the United States sought to enforce by suit in equity a debt arising from a shipbuilder out of a similar contract, upon the theory that the Fleet Corporation entered into such contract as agent for the United States and not as principal. If it did, any right growing out of its breach was, of course, that of the United States and not of the Fleet Corporation, and the United States could sue thereon. The Circuit Court of Appeals held that the Fleet Corporation entered into the contract not as agent but as principal. In this it was affirmed by *pro curiam* opinion of this Court upon the authority of *Fleet Corporation* v. *Wood* (title of one of the three cases decided by the opinion in the *Sloan* case). It necessarily follows that if the United States could not enforce the obligation arising under the contract because the contract was that of the Fleet Corporation as principal, the Fleet Corporation as principal is liable on all such contracts, as well as entitled to recover thereon.

Reference has already been made to the supposed uncertainty as to the meaning of the *Sloan* case growing out of the language of the dissenting opinion. In affirming *United States* v. *Wood,* upon the authority of the *Sloan* case, it would appear that this Court had put an end to all such uncertainty. The decision of the lower court

rested also upon another ground, namely, that even if the United States were the real party in interest it could not maintain the suit brought. Unless, by affirming on the authority of the *Sloan* case, this Court intended to declare that the substantive rights and obligations of the Fleet Corporation were those of a principal and not of an agent, it is inconceivable that it would have affirmed upon the authority of that case.

4. The cases relied on by the petitioner do not sustain its contention.

Hodgson v. *Dexter, supra,* and *Parks* v. *Ross, supra,* were called to the attention of this Court in the *Sloan* case (brief of counsel for Fleet Corporation, 258 U. S., at p. 553) in support of the same contention.

Furthermore, *Hodgson* v. *Dexter, supra,* and *Parks* v. *Ross, supra,* do not lay down the rule that a public agent may not be personally liable on a contract made by him on account of the Government, but only that a presumption arises that a public officer contracting on behalf of the Government does not intend to bind himself personally. It is well settled that an agent may so contract as to become personally bound. *Whitney* v. *Wyman,* 101 U. S. 392; *Steamship Bulgarian Co.* v. *Merchants' Despatch Transportation Co.,* 135 Mass. 421; *Wilder* v. *Cowles,* 100 Mass. 487; *Worthington* v. *Cowles,* 112 Mass. 30; *Kean* v. *Davis,* 20 N. J. L. 425; *Hall* v. *Louderdale,* 46 N. Y. 70; *Gerloff* v. *Carleton,* 121 N. Y. Supp. 338; *McCarthy* v. *Hughes,* 88 Atl. 984 (R. I.); *Humes* v. *Decatur, Land, etc., Co.,* 98 Ala. 461, 13 Sou. 368; *Bell* v. *Teague,* 85 Ala. 211, 3 Sou. 861; *Simonds* v.

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Even in the case of a public officer the presumption arising under the rule of *Hodgson* v. *Dexter* may be overcome. *Gill* v. *Brown*, 12 Johnson, 385; *Walker* v. *Swartwout*, 12 Johnson, 444; *Nichols* v. *Moody*, 22 Barbour, 611 (General Term, Sup. Ct. N. Y.); *Crowell* v. *Crispin*, 4 Daly (N. Y.) 100; *Woodbridge* v. *Hall*, 47 N. J. L. 388; *Knight* v. *Clark*, 48 N. J. L. 22; *Timpken* v. *Tallmadge*, 54 N. J. L. 117, 22 Atl. 996; *Cook* v. *Irvine*, 5 Serg. & R. 492 (Sup. Ct. Pa.); *Ogden* v. *Raymond*, 22 Conn. 379; *Providence* v. *Miller*, 11 R. L. 272. See also *Story on Agency*, §§ 302, 303 and 306.

The effect of the decision in the *Sloan* and *Wood* cases is to hold that the presumption, if any, arising from the fact that the Fleet Corporation was acting as a governmental agency, was overcome by the contracts entered into, similar in terms, and containing the same characteristics as those in suit. Indeed it may be doubted whether the presumption arising under *Hodgson* v. *Dexter*, in respect of contracts entered into by a public officer, applies, where, as in this case, the agency chosen by the Government is a private corporation. In the *Sloan* case the Court said:

> "* * * The fact that the corporation was formed under the general laws of the District of Columbia is persuasive, even standing alone, that it was expected to contract and to stand suit in its own person, whatever indemnities might be furnished by the United States." (258 U. S. 570.)

It may not be doubted that the purpose of choosing the Fleet Corporation as the agency to be employed was to be freed from the restrictions imposed upon the letting of Government contracts, the carrying on of the activities of Government Departments, and the disbursement of Government funds. The Act of June 15, 1917, is itself expressive of such a purpose, since it provides "that all monies turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other monies of said corporation are now expended." This provision, added in conference, was obviously for the purpose of permitting the Fleet Corporation, in the execution of powers which might be conferred upon it, to act as a private corporation free from governmental restrictions in the use of its funds. If there be any doubt that such was its purpose, such doubt is removed by the explanation of its purpose as contained in the statement made by Senator Underwood, reporting to the Senate for the conferees the Bill which became the Act of June 15, 1917 (Ex. 13, fols. 1264-1269, R. 422). A private corporation, deliberately chosen as an agency for the Government for the purpose of taking advantage of powers conferred upon it as a private corporation and not possessed

by an officer of the Government itself, is clearly liable, as other private corporations are, on contracts executed by itself as principal in the exercise of such powers. As indicated by the excerpt from the opinion in the *Sloan* case quoted above, it may be doubted whether the presumption arising in the case of contracts made by a public officer ever arose in respect of contracts of the Fleet Corporation made under the circumstances disclosed of record. If so, such presumption was entirely removed by the contracts themselves, executed, as in the case cited, by the Fleet Corporation as principal.

It is respectfully submitted that the petition for *writ of certiorari* should be denied.

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WILLIAM W. ROBISON,
Attorneys for Respondents.

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No. 345

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, sued in the Name of the UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

Petitioner,

v.

P. LEROY HARWOOD, as TRUSTEE IN BANKRUPTCY OF GROTON IRON WORKS and ISAAC SIEGEL and JOHN M. P. THATCHER, as Ancillary Receivers of United Steamship Company, Intervenors,

Respondents.

BRIEF FOR RESPONDENTS.

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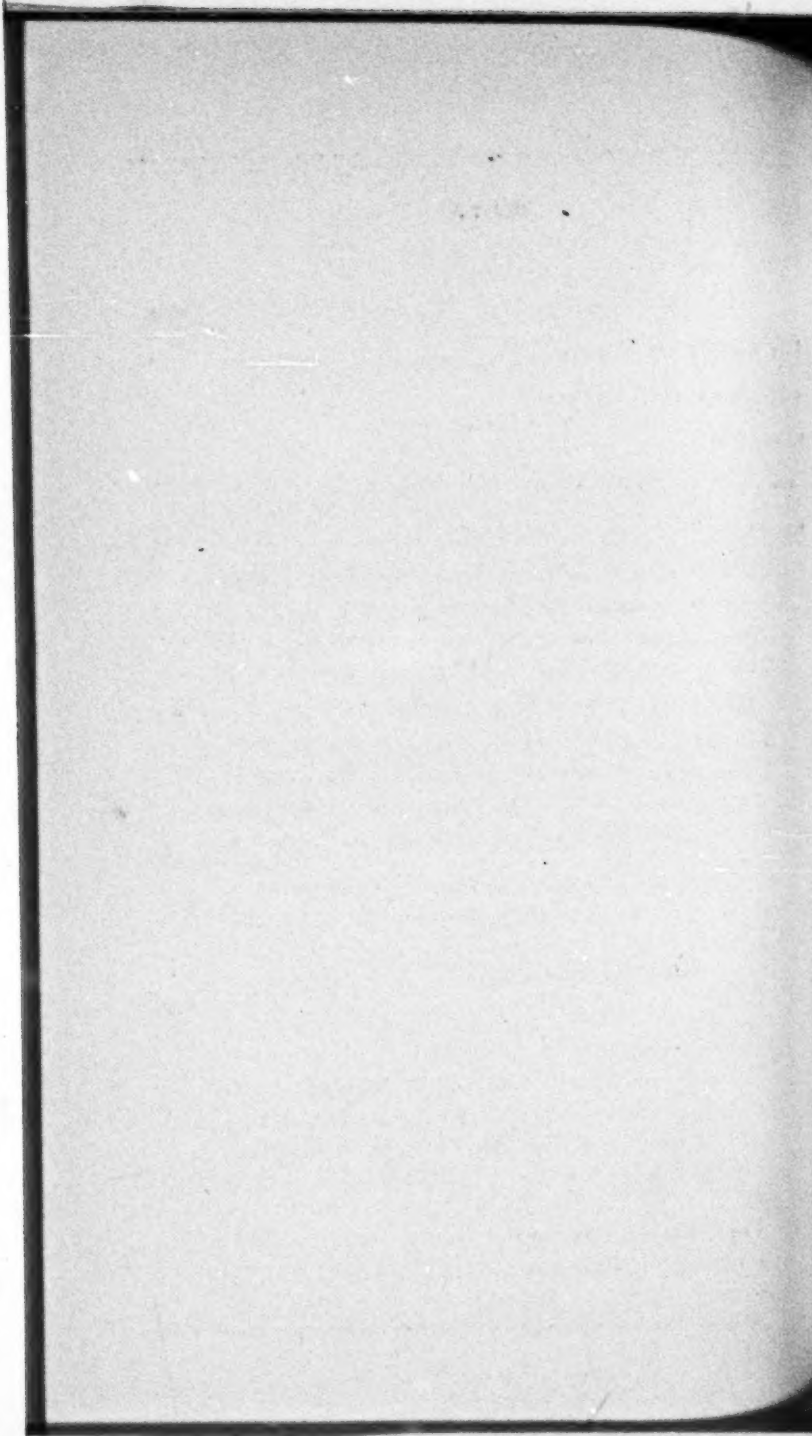

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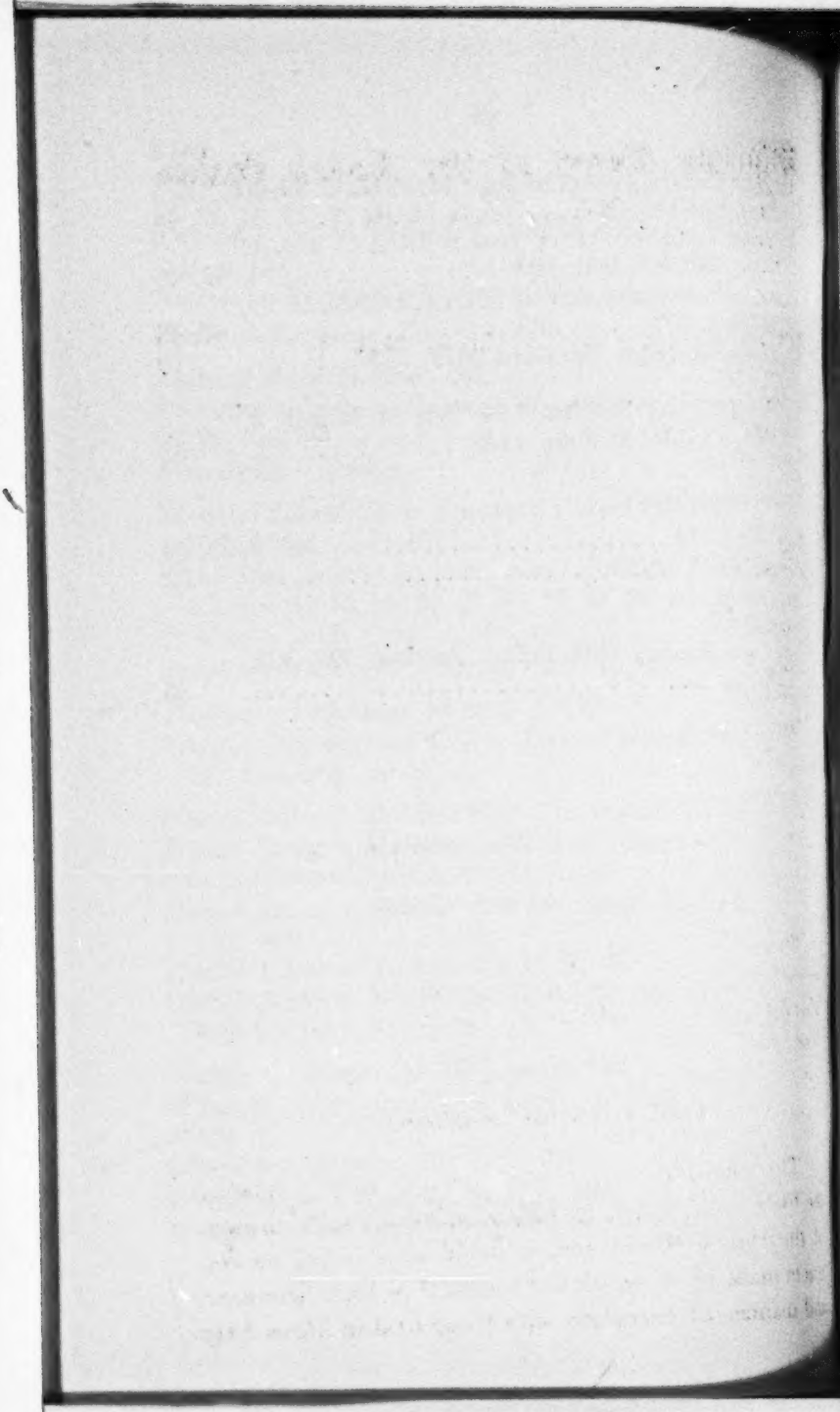

Supreme Court of the United States

OCTOBER TERM, 1929

No. 345

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, sued in the Name of the UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

Petitioner,

v.

P. LEROY HARWOOD, as TRUSTEE IN BANKRUPTCY OF GROTON IRON WORKS and ISAAC SIEGEL and JOHN M. P. THATCHER, as Ancillary Receivers of United Steamship Company, Intervenors,

Respondents.

BRIEF FOR RESPONDENTS.

THE OPINIONS BELOW.

The opinion of the District Court (R. 312-318) is reported in 26 Fed. (2d) 116; and the opinion of the Circuit Court of Appeals (R. 338-343) is reported in 32 Fed. (2d) 680.

THE QUESTION PRESENTED.

The sole question presented in this case is whether the Fleet Corporation contracted as principal, or as agent of the United States, and is liable as principal on contracts made by it, which are identical in form, substance and manner of execution with those held in *Sloan Ship-*

yards v. *United States*, 258 U. S. 549, to be contracts of the Fleet Corporation and not of the United States.

STATEMENT.

The Emergency Shipping Fund provisions of the Urgent Deficiency Act of June 15, 1917 (40 Stat. 182)*, authorized the construction of ships at a cost not to exceed $500,000,000, and empowered the President (1) to place orders therefor, and (2) to exercise the powers conferred through such agency or agencies as he might determine. By Executive Order dated July 11, 1917† the President delegated to the Emergency Fleet Corporation the powers so conferred, insofar as applicable to the construction of vessels, and by further Executive Order of December 3, 1918‡ confirmed such delegation and ratified all acts theretofore done thereunder.

Prior to the date of the first Executive Order and on June 15, 1917 the Fleet Corporation contracted with Groton Iron Works (of which respondent Harwood is Trustee in Bankruptcy) for the construction of twelve wooden hulls at the latter's Noank Yards (R. 36), later reduced to eight by a supplemental contract dated September 30, 1918 (R. 44). On August 11, 1917 and on April 20, 1918 respectively the Fleet Corporation entered into two other contracts with Groton, each for the construction of six steel ships, at its Groton Yard (R. 48, 59).

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*Text set forth in the Appendix, post, at page i.
†Text set forth in full in the Appendix, post, at page iii.
‡Text set forth in full in the Appendix, post, at page iv.

On March 26, 1920, the parties entered into another contract supplemental to each of the four preceding contracts (R. 75). At that time five of the eight wooden ships and six of the steel ships had been delivered and three additional steel ships were nearing completion. This contract provided (1) for the cancellation of so much of the preceding contracts as called for the construction of the uncompleted vessels with the exception of the three steel ships nearing completion, (2) for readjustment of steel ship prices and (3) for the settlement of certain disputes that had arisen under the preceding contracts. Except as expressly modified thereby, the preceding contracts were to remain in full force and effect (Article XVII, R. 89). As a result, a receivership, which had intervened, was lifted and Groton resumed possession of its own yards, as stated in petitioner's brief (p. 7), although this circumstance is not material to any issue presented in this Court.

On July 11, 1923 Harwood, Trustee in Bankruptcy of Groton, filed a bill against the Fleet Corporation (R. 15) to set the contract of March 26, 1920 aside for duress, fraud, and mutual mistake of fact and for an accounting on the original construction contracts, or in the alternative, for an accounting under the contract of March 26, 1920 itself.*

The Fleet Corporation, in addition to tendering the general issue, interposed special defenses. Those num-

*As appears from the record and from petitioner's brief (p. 8) the suit in which this bill was filed was originally instituted by Groton, prior to its bankruptcy, as an action at law in the State Court, and removed to the United States District Court where, upon stipulation, it was transferred to the equity side (R. 14). Following this, the Trustee filed his new bill of complaint, as stated in the text, on which the suit proceeded (R. 15).

bered "First" and "Fourth" were severed from the remaining issues, and referred to a Special Master (R. 99).

In the Fourth Separate Defense the Fleet Corporation alleged that it had acted solely as an agent of the United States under powers delegated to it by the President under the Act of June 15, 1917, and had assumed no personal liability under the contracts made (R. 95). Upon this issue the Master found against the Fleet Corporation *on both the law and the facts* (R. 113).

Its First Separate Defense (R. 93) pleaded the contract of March 26, 1920 as an accord and satisfaction of all previously existing claims and demands, etc., arising under the preceding construction contracts, and was sustained by the Master (R. 113).

Although the contracts were in all respects similar to those reviewed in the *Sloan* case, the District Court sustained the Fleet Corporation's exceptions to the Master's Report in respect of the Fourth Separate Defense, overruled Groton's exceptions in respect of the First Separate Defense, and dismissed the bill (R. 318).

On appeal the Circuit Court of Appeals affirmed the decision of the District Court in respect of the First Defense, but, reversed it as to the Fourth Defense, holding that the Fleet Corporation executed the contracts in question as principal and was liable thereunder as such, and that hence an accounting should be had on the settlement contract of March 26, 1920 (R. 338). As will appear from the facts stated in the argument, the accounting to be had is governed in its most important particulars by the unmodified provisions of the preceding contracts, to which this contract was supplemental.

SUMMARY OF ARGUMENT.

I. The contracts in question are identical in form and substance with those involved in the *Sloan* case and on their face were executed by the Fleet Corporation as principal and not as agent. (Post, page 7).

(1) The three original construction contracts are identical with those in the *Sloan* case and on their face were the contracts of the Fleet Corporation and not of the United States. (Post, page 8).

(2) In executing the supplemental contract of September 30, 1918, modifying the wooden ship contract of June 15, 1917, the Fleet Corporation contracted in the same capacity, i.e., as principal. (Post, page 10).

(3) The fifth contract, to wit, that of March 26, 1920, on which, under the opinion of the court below the accounting must proceed, is likewise on its face the contract of the Fleet Corporation. (Post, page 11).

II. The Fleet Corporation was liable on contracts made in its own name, even if acting for the United States, in furtherance of the purposes of the Act of June 15, 1917, and under the powers delegated thereunder. (Post, page 21).

(1) The contention that this case is distinguishable from the *Sloan* case upon the ground that all that was determined therein was that the Fleet Corporation was suable on such contracts is inconsistent with the decision in that case and with its reasoning. Each of the three cases de-

cided in the *Sloan* case rests upon a common ground, namely, that the substantive rights and obligations of the Fleet Corporation under contracts such as these were those of a principal. (Post, page 21).

(2) The respondents' contention is sustained by subsequent decisions of this Court and by the decision of every circuit court of appeals which has passed upon the question. (Post, page 29).

(3) The hardship resulting from the long lapse of time since the decision in the *Sloan* case, during which this and similar claimants have proceeded on the supposed authority of the *Sloan* case, as interpreted in the foregoing decisions, and have become barred from prosecuting their claims against the United States in the Court of Claims, is suggestive that the *Sloan* case and the decisions interpreting it should be neither overruled nor qualified except for the most cogent reasons. (Post, page 33).

(4) The decision of the court below is not in conflict with the cases cited by the petitioner, but is in harmony with settled principles of law governing the liability of an agent (whether private or public) contracting as principal, and is consistent with the congressional and executive purpose in choosing a private corporation as the agency for the exercise of powers conferred by the Act of June 15, 1917. (Post, page 35).

III. The liability of the Fleet Corporation is unaffected by the Merchant Marine Act of June 5, 1920. (Post, page 41).

ARGUMENT.

I.

THE CONTRACTS IN QUESTION ARE IDENTICAL IN FORM AND SUBSTANCE WITH THOSE INVOLVED IN THE *SLOAN* CASE AND ON THEIR FACE WERE EXECUTED BY THE FLEET CORPORATION AS PRINCIPAL AND NOT AS AGENT.

In *Sloan Shipyards* v. *United States,* 258 U. S. 549, the Court held that the contracts there under review were on their face contracts of the Fleet Corporation and not of the United States, because executed by the Fleet Corporation in its own name and because the undertakings assumed and the rights acquired were expressed to be assumed, or acquired, by the Fleet Corporation, in its own name, and not in the name of the United States. It was further pointed out that the distinction between the Fleet Corporation and the United States was marked in the contracts themselves.

Each of the contracts involved in this case is identical in form and substance with those so construed.

Five related contracts are involved. The petitioners would have the Court confine its attention to the last, that of March 26, 1920, under which the respondent is entitled to an accounting under the decision of the court below. This contract was expressly declared to be supplemental to the preceding contracts. While it settles certain disputes, and in some respects readjusted the rights and obligations of the parties, the accounting to be had thereunder is to be governed in its most

important particulars by the unmodified provisions of the contracts to which it is supplemental. This contract, like those which preceded it, is believed to be on its face the contract of the Fleet Corporation and not of the United States. In any event, it was clearly executed by the Fleet Corporation in the same capacity, and if there be any uncertainty as to whether in its execution the Fleet Corporation contracted as principal or agent, such ambiguity must be resolved by a determination of the capacity in which it executed the contracts to which it was supplemental. For all of these reasons it is necessary, therefore, to consider the preceding contracts as well as that under which the accounting is to be had.

1. The three original construction contracts are identical with those in the *Sloan* case and on their face were the contracts of the Fleet Corporation and not of the United States.

The wooden ship contract (R. 36) was executed June 15, 1917, and before the first Executive Order of July 11, 1917, delegating to the Fleet Corporation powers conferred upon the President by the Act of June 15, 1917. In executing this contract, therefore, the Fleet Corporation could not have been exercising such powers but was contracting in its own name as principal solely under the powers derived from its certificate of incorporation (R. 251).

In this contract and in the first steel ship contract, executed after such delegation (R. 48), the Fleet Corporation is described as the owner for whom the vessels were to be constructed. All obligations of the contractor

run to the owner so designated and all obligations running to the contractor are in express terms assumed by the owner. Each was executed by the Fleet Corporation in its own name. The only mention of the United States in either is in a provision common to both (Article III, Ex. 1, R. 40; Article III, Ex. 3, R. 53) defining the rights of the contractor in the event of "delay * * * of the *owner*, or by reason of alterations or additions by the *owner*, or the commandeering by the *United States* Government of materials" etc. (italics ours) thus marking the distinction between the owner and the United States.

The second steel ship contract (Ex. 4, R. 59) differs from the two preceding contracts only in that it is recited as being between the contractor and "the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the owner), representing the United States of America".

In *Sloan Shipyards* v. *Fleet Corporation, supra,* a similar recital was held to be without significance as bearing upon the question whether the contract was that of the Fleet Corporation or of the United States. This, it was held, must be determined by a consideration of its form and substance. The provisions of this contract are identical in form and substance with those reviewed in the *Sloan* case. As in that case, the undertakings of the party of the second part are expressed to be those of the Fleet Corporation designated as the owner, and it is the owner and not the United States who is to be satisfied with its performance and to whom the contractor's obligations run. In this contract as in the preceding contract, as well as in those in the *Sloan* case, the

distinction between the United States and the Fleet Corporation or owner is marked.

In this and in the two preceding contracts it was also provided that the contract might not be assigned without the consent of the owner (Fleet Corporation) but that payments due or to be due might be assigned for the purpose of obtaining credit for further construction (Article XII, Ex. 1, R. 43; Article XII, Ex. 3, R. 56; Article XI, Ex. 4, R. 69). Of these provisions the first would have been superfluous, if the contract had been with the United States of America, and the second void (R. S. 3737, 3477).

Each of the original construction contracts was, on its face, a contract with the Fleet Corporation and not with the United States and was executed by it in its own name as principal.

2. In executing the supplemental contract of September 30, 1918, modifying the wooden ship contract of June 15, 1917, the Fleet Corporation contracted in the same capacity, i.e., as principal.

The only mention of the United States in this contract (R. 44) is in the preamble which similarly describes the Fleet Corporation as "representing the United States".

The effect of this contract (R. 44) was (1) to reduce the number of hulls to be constructed to eight by cancelling four, (2) to release the contractor and the owner, respectively, from all obligations and liabilities arising from such cancellation, (3) to settle certain disputes which had arisen under the original contract and (4) to

modify the prices to be paid for the eight uncancelled hulls. It is declared in the preamble to be "supplementary" to the earlier contract (Ex. 2, R. 44) under which it is recited that the contractor had agreed to construct for the owner the wooden hulls described therein (R. 44). Except as so modified, it is expressly provided that "said contract of June 15, 1917, * * * is in full force and effect" etc. (Ex. 2, I (2), R. 44). In executing this supplementary contract the Fleet Corporation clearly contracted in the same capacity as in the original wooden ship contract to which it was supplemental and which was executed before any delegation of power to the Fleet Corporation under the act of June 15, 1917. In form and substance, as well as by reason of the circumstances and manner of its execution and its relation to the contract to which it was supplemental, it is the contract of the Fleet Corporation and not of the United States, under the decision in the *Sloan* case.

3. The fifth contract, to wit, that of March 26, 1920, on which, under the opinion of the Court below, the accounting must proceed, is likewise on its face the contract of the Fleet Corporation.

The preamble of this contract is as follows (R. 75):

> "Agreement made this 26th day of March, 1920, between the Groton Iron Works, a corporation organized and existing under the laws of the State of Maine (hereinafter called the contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, representing and acting

> in respect to all matters hereinafter contained for and on behalf of the United States of America (hereinafter referred to as the owner), party of the second part, witnesseth:"

This is essentially the same recital considered in the *Sloan* case and contained in two of the preceding contracts.

No importance is to be attached to the fact that in this contract the words "hereinafter referred to as the owner" follow the words "the United States of America". In the second steel ship contract the words "hereinafter called the owner" follow the words "Fleet Corporation" and before the recital. In the second wooden ship contract they appear at the end of the preamble after the words "party of the second part". In the contract now under review they appear after the recital of representation but before the words "party of the second part". The office of these words was clearly the same in all three, namely, to provide a short designation for the party of the second part whenever referred to in the body of the contract, just as the party of the first part is designated by its short title "the contractor".

Uncertainty, if any, as to the person designated as owner, arising from the placement of these words, disappears upon an examination of the contract. Like the preceding contracts, it was executed by the Fleet Corporation in its own name, and by Article XVII is expressly declared to be supplemental to the preceding contracts which, except as modified, "shall remain in full force and effect" (R. 85). Presumptively, at least, this supplemental contract by and between the same parties was

executed by the Fleet Corporation in the same capacity as the preceding contracts, viz., as principal.

That "the owner" described in the preamble, is the Fleet Corporation and not the United States appears from almost every article of the contract itself.

Article II (*a*) refers to two mortgages given by the contractor to "the owner" to secure loans made by the "owner". These mortgages were mortgages given to the Fleet Corporation *eo nomine* without mention of the United States and for loans made by the former (Defendant's Exhibits A and B., R. 219, 220) later assigned to the United States but not until April 16, 1923 (Defendant's Exhibit M., R. 222). By paragraphs (*d*), (*e*) and (*f*) of the same article (R. 77) the contractor remains bound "by all valid existing obligations * * * to the owner" but releases "the owner" from all of its obligations arising out of contracts 57 and 225 (the steel ship contracts), except as otherwise specified. These obligations were obligations arising in favor of or against the Fleet Corporation, out of the preceding contracts. As in the *Sloan* case the distinction between the owner, Fleet Corporation and the United States is marked in paragraph (*h*) of this Article (R. 78), reading:

> "(h) The title to hulls 7 to 9 is and shall remain in the *United States of America,* and title to all material, machinery, and/or equipment now or hereafter in the Groton yard of the contractor and intended for the construction and outfitting of said hulls is and shall remain in the *owner,* but nothing herein shall impair or affect the rights of the contractor to a credit for any of such material as provided by Article VIII hereof" (Italics ours).

Article IV (R. 79) increasing the prices to be paid for the steel ships provides that in the payment thereof "the owner" is to be credited with "payments and advances and charges herein provided to be made or *heretofore made by the owner*" (IV. (*a*)) (italics ours). This refers, of course, to payments made by the Fleet Corporation under the preceding contracts.

Article V (R. 80) provides that the owner shall pay the actual cost of building the three steel ships remaining to be completed, but not exceeding the difference between $16,155,648 and "amounts heretofore paid by the owner" (V, 1); and that in the computation of such cost all such charges "as may *have been* * * * made by the owner * * * in connection with the ship construction contracts," etc. shall be included and "the owner" shall be credited with "credits heretofore accrued in connection with any transaction related to ship construction activities" etc. (Article V, 3, (*b*), (*c*)). No one but the party to the preceding contracts (the Fleet Corporation) could possibly have been referred to in these provisions.

This article also provides that the "owner" shall make the payments specified "through its District Office" (Article V, 1; R. 80) and paragraph 4 (R. 81) of this article further provides:

> "Any amount of money in excess of that to be furnished by the Fleet Corporation needed to complete the said vessels shall be furnished by the contractor."

The District Office was that of the Fleet Corporation, while paragraph 4, quoted above, definitely identifies the

Fleet Corporation as the "owner" by whom the payments required by the same article are to be made.

Articles VIII and IX again provide for crediting the "owner" with the amounts "heretofore charged by the owner" (Article VIII, 2, R. 82) and with payments or advances theretofore made by it (Article IX, R. 82), under the preceding contracts, which were the contracts of the Fleet Corporation.

If there be any doubt as to the person referred to as the owner, such doubt would appear to be entirely set at rest by Article X (R. 83) which plainly establishes the identity of the owner and the Fleet Corporation; and reading as follows:

> "Representative of Fleet Corporation
>
> "The *owner* shall appoint and pay the salary of a competent representative to be stationed at the plant of the contractor. The duties of such representatives shall include the approval of all vouchers covering disbursements in connection with this agreement and also the functions of referee in connection with the settlement of questions arising thereunder as to the approval of vouchers." (Italics ours.)

Paragraph 2 of Article XII (R. 84), providing for payment of the completed wooden ships and for reconciliation of the accounts of the owner and the contractor again makes it plain that it is the Fleet Corporation which is described in the contract as the owner, the owner to pay any amount found due by it to the contractor. The accounts to be reconciled were of the Fleet Corporation and the contractor. The contractor had no accounts with the United States.

From the foregoing, it may not be doubted that the person described in the preamble as the owner is the person with whom the preceding contracts had been made, and that this contract was executed by the Fleet Corporation in the same capacity as were they. As it executed the preceding contracts as principal, it executed this contract in the same capacity. Furthermore, with the identity of the owner clearly revealed, the rights acquired and the obligations assumed, as in the *Sloan* case, were those of the Fleet Corporation and not of the United States.

The conclusions to be drawn from the contracts as a whole are not destroyed by the fact that the contractor agreed among other things, to accept the considerations moving to it on account of cancellation of so much of the contracts as called for the construction of uncompleted ships, as "just compensation." Petitioner argues that since only the United States had the power to cancel contracts and was under the duty of awarding just compensation, the contract must have been that of the United States.

But these ships were not "cancelled" by the Shipping Board, by the Fleet Corporation or by the United States, in the sense that such cancellation was an exercise of the power of eminent domain under the Urgent Deficiency Act of June 15, 1917. They were voluntarily cancelled by agreement of the parties to the original contract, in the same way that any private contracting parties may provide for the cancellation of existing obligations. They were voluntarily cancelled in consideration of the amounts agreed to be paid on account thereof. Under these circumstances the United States was under

no duty to make just compensation, a duty which arose only upon the cancellation of contracts *in invitum*.

It was competent for the parties to the original contract to fix the consideration or compensation to be paid on account of a cancellation of a part of such contracts by mutual consent. The fact that it is described as just compensation is wholly insufficient to convert this contract, in form and substance that of the Fleet Corporation, into a contract of the United States. Moreover the payments to be received are also described as amounts to be accepted "in accord and satisfaction for the said suspension and cancellation" etc. (Article III, R. 78).

The words are unimportant. It is the substance that counts. And the substance of the transaction was that the parties to the old contracts agreed that they should be in part cancelled and fixed the consideration therefor.

Furthermore, undue emphasis is given in petitioner's brief to cancellation features of this contract. The contract also provided for a readjustment of the prices to be paid for the construction of the steel ships, including both those already completed and the uncancelled ships to be completed. Except for such readjustment of prices, the ships to be completed were to be completed in accordance with the provisions of the preceding contracts and the credits and debits allowed on both the completed and uncompleted ships in determining the amount to be paid by the Fleet Corporation for such ships were to be determined in accordance with the preceding contracts. Payments to be made for the completed wooden ships were to be made at the prices and in accordance with the provisions of the wooden ship contract and the sub-

sequent supplement thereto, by reconciliation of the accounts of the parties thereto. The cancellation of so much of the contracts as provided for construction of the uncompleted vessels was therefore but one feature of this contract, a feature having but little effect upon the accounting to be had thereunder, under the decision of the court below. No accounting proceeding is required to determine the amount due to the contractor on account of such cancellation since the consideration moving to it therefor is definitely stated in the contract. The necessity for an accounting arises under the complicated accounts involved in determining credits to which the Fleet Corporation was entitled in determining the amount remaining to be paid for the steel ships, and in determining the amount due for the construction of the wooden ships, all questions arising in connection therewith being questions arising under the preceding construction contracts, whose provisions in these respects were unmodified.

It was also appropriate for the Fleet Corporation to protect the Government by taking a release of all obligations of the Government as well as of the Fleet Corporation, in the same manner in which private contracts frequently contain provisions for the benefit of third parties, as well as of the contracting parties themselves. It does not follow that the contract is that of the United States any more than it follows that such a private contract is the contract of the third party for whose benefit certain clauses are inserted therein. Furthermore, the very release clause itself (R. 83, Article XII), upon which the Fleet Corporation relies, distinguishes between the United States and the Fleet Corporation, both in its

corporate capacity and as representing the United States, referring to itself specifically in each capacity.

Speaking of this very contract, petitioner's brief (pp. 18-19) says:

> "There are in the contract several references to 'the owner' so phrased as to imply that the Fleet Corporation regarded and referred to itself as 'the owner'. This confusion of identity and ownership can only be explained when it is remembered that up to the decision of this Court in the *Sloan-Astoria-Eastern Shore cases,* 258 U. S. 549, the officials and attorneys of the Fleet Corporation asserted and consistently maintained that the Fleet Corporation was an integral arm and branch of the Government, similar to the Navy Department or any other executive department or bureau."

These admissions are alone sufficient to show that the Fleet Corporation is the party designated as "the owner", and that it executed this contract in the same capacity in which it executed the preceding contracts.

They also afford a complete answer to the contention that the contract of March 26, 1920 was a novation whereby the United States was substituted as the contractor's obligor. If, as stated, the officers and attorneys of the Fleet Corporation, until the decision in the *Sloan* case, rendered long after this contract, thought that the Fleet Corporation and the United States were one, they could not have intended the contract of March 26, 1920 to have been a novation introducing an additional party, to wit, the United States, into the situation. Nor was it such. As stated by petitioner (Brief p. 33) one of the

requisites of a novation is the consent of all the parties to the substitution. Nowhere in the contract does the contractor agree to accept the substitution of the United States for the Fleet Corporation as its obligor. Nowhere does the United States agree to assume the existing obligations of the Fleet Corporation. Nowhere does the contractor agree to become bound to the United States in respect of the matters concerning which it was bound to the Fleet Corporation. As in the preceding contracts, there were but two parties to this contract, not three. Under petitioner's contention, one of these was the United States, the other Groton. If this be so, then the Fleet Corporation was not a party at all, although the four preceding contracts were with it.

If a novation had been intended whereby the previously existing liability of the Fleet Corporation as principal would be extinguished and the liability of the United States substituted therefor and accepted by the contractor, the contract would have so provided and the Fleet Corporation undoubtedly would have executed it both in its own name as principal and in the name of the United States as agent. This it did not do but executed this contract in the same capacity in which it had executed the others. This plainly appears from the foregoing analysis of the contract and from the quotation from petitioner's brief, which is an admission that in executing this contract the Fleet Corporation acted in the same capacity as before. The suggested novation is an afterthought, brought about by the decision in the *Sloan* case, had no foundation in fact and was entirely unthought of at the time.

II.

THE FLEET CORPORATION WAS LIABLE ON CONTRACTS MADE IN ITS OWN NAME, EVEN IF ACTING FOR THE UNITED STATES, IN FURTHERANCE OF THE PURPOSES OF THE ACT OF JUNE 15, 1917 AND UNDER POWERS DELEGATED THEREUNDER.

1. The contention that this case is distinguishable from the *Sloan* case upon the ground that all that was determined therein was that the Fleet Corporation was suable on such contracts is inconsistent with the decision in that case and with its reasoning.

This contention, besides being based upon an artificial and unwarranted distinction between suability and liability, is believed to be inconsistent with what was actually decided in the *Sloan* case, as well as with its reasoning.

In two of the three cases decided in the *Sloan* case, the question presented was the capacity of the Fleet Corporation to be sued under contracts so made. In the third (the *Eastern Shore* case) the question was one of substantive right, the Fleet Corporation asserting that an indebtedness which had accrued to it under one of these construction contracts was a debt due to the United States and hence entitled to priority.

The argument of the Fleet Corporation in each case was that it contracted not for itself as principal but as an agent of the United States, acting under powers delegated to it by the President by executive orders made under the act of June 15, 1917. Hence it argued that

the obligations assumed and rights acquired were those of the United States, as principal, and not of the Fleet Corporation. In each case the decision turned, not upon the relationship established by Act of Congress and the executive orders thereunder, but upon the question as to whether the contracts involved were those of the Fleet Corporation or of the United States. They were held to be those of the Fleet Corporation. The arguments to the contrary, now submitted, are the same as those then submitted and rejected.

(a) *The first case (the Sloan case).*

Two contracts were involved in this case, an original contract of May 18, 1917 and another which it was alleged the Fleet Corporation compelled the contractor to execute after the former had taken possession of the latter's yards on December 1, 1917. It was this contract that was sought to be set aside (Opinion 565). The second contract was thus entered into after the Act of June 15, 1917, and delegation of powers to the Fleet Corporation thereunder, and the Court points out the distinction between the powers possessed by the Fleet Corporation before and after such delegation. In the second contract, made after such delegation, the Fleet Corporation as in three of the contracts now under review, including the contract of March 26, 1920, is recited as "representing the United States". As in this case, the Fleet Corporation relied largely, if not entirely, on this recital, coupled with the delegation of power under the executive orders. In respect of such recital the Court said:

> "We attach no importance to the fact that the second contract, alleged to have been illegally ex-

> torted, was made with the Fleet Corporation 'representing the United States of America'. The Fleet Corporation was the contractor, even if the added words had any secondary effect. * * * " (p. 568).

This conclusion it reached from an examination of the contract itself, which it found to be on its face the contract of the Fleet Corporation as principal, and held that it was therefore suable thereon.

(b) *The second case* (*the Astoria case*).

The *Astoria* case was one for breach of a contract executed long after such delegation of power and containing a similar recital, in respect of which the Court said:

> " * * * This contract was made on February 1, 1919, when the character of the Fleet Corporation had been more fully developed and determined than in the previous case, and purported to be made with the Fleet Corporation, 'a Corporation organized and existing under the laws of the District of Columbia (herein called the "Corporation"), representing the United States of America, party of the second part.' Throughout the contract the undertakings of the party of the second part are expressed to be undertakings of the Corporation and it is this corporation and its officers that are to be satisfied in regard to what is required from the Iron Works. It is recognized that it may be necessary for the United States to exercise complete control over the furnishing of supplies to the Iron Works and it is agreed that if required by the Corporation 'and/or the United States' the Iron Works will furnish schedules, &c, &c. The whole frame of the instrument seems

> to us plainly to recognize the Corporation as the immediate party to the contract. The distinction between it and the United States is marked in the phrase last quoted. If we are right in this, further reasoning seems to us unnecessary to show that there was jurisdiction of the suit. The fact that the corporation was formed under the general laws of the District of Columbia is persuasive, even standing alone, that it was expected to contract and to stand suit in its own person, whatever indemnities might be furnished by the United States. * * * " (pp. 569-570).

So construing the contract and its legal effect, it held that the Fleet Corporation was suable thereon. That is to say, the Court held that the contract was that of the Fleet Corporation as principal and that as such it was suable thereon.

The Court's reference to the broadened powers of the Fleet Corporation at the time of execution of this contract, and to the recital contained therein, warrants the inference that in deciding that the Fleet Corporation was suable thereon, the Court assumed that in making this contract the Fleet Corporation was acting for the United States under the Act of June 15, 1917, and the executive orders thereunder, and in furtherance of the purposes of said Act. It is said in petitioner's brief (pp. 13, 14) that by reason of this recital, coupled with the Act of Congress and the executive orders thereunder, the contractor was charged with notice that it was dealing with a public agent and this was seemingly the purpose of the inclusion of this recital. So, however, were the parties to the *Astoria* case. Despite such recital, the Fleet Corporation was held to be suable because it had con-

tracted as principal, from which it necessarily follows that, if suable as principal, it is liable as such.

(c) *The third case (the Eastern Shore case).*

In this case the question was one of substantive right and not of the capacity of the Fleet Corporation to be sued. The contractor in that case had entered into a contract with the Fleet Corporation, again recited as representing the United States, which is shown by the opinion of the court below (274 Fed. 893, 895, 902) to have been made on August 22, 1918, after the delegation of powers hereinbefore described. Under this contract indebtedness had accrued to the Fleet Corporation, which asserted that such indebtedness was entitled to the preferences accorded to the United States because in executing the contract, out of which the indebtedness grew, the Fleet Corporation had acted, not as principal, but as agent for the United States. In holding that the claim arising under such contract was that of the Fleet Corporation and not of the United States, Judge Rogers, for the Circuit Court of Appeals of the second circuit said (274 Fed. 902):

> "It cannot be seriously contended, although the argument was addressed to us, that inasmuch as the Fleet Corporation was an agent of the government it could not be personally liable on its contracts, as agents are not personally liable on contracts made by them within the scope of their authority. We are told that a contract made in the name of a public agent will be construed to be a contract of the government, and not of the agent. Huffcut on Agency (2d Ed.) p. 254.

> This is to lose sight of the fact that the Fleet Corporation contracted as a principal in its contract with the bankrupt. It designated itself throughout the contract as owner, and was careful to distinguish between itself as owner and the United States, and the debt due from the bankrupt under the contract is a debt due to it as a principal, and not to the United States."

In affirming, this Court said (258 U. S. p. 570):

> "The third case, as we have said, is a claim of priority in bankruptcy. It was asserted against the estate of the Eastern Shore Shipbuilding Corporation, in the District Court for the Southern District of New York, under a contract similar to that last described, made by that Company with the Fleet Corporation 'representing the United States of America' to construct six harbor tugs. The claim was presented by the Fleet Corporation in its own name, but was put forward by it as an instrumentality of the Government of the United States. It was denied successively by the referee, the District Court and the Circuit Court of Appeals on the ground that the Fleet Corporation was a distinct entity, and that, whatever might be the law as to a direct claim of the United States, the Fleet Corporation stood like other creditors and was not to be preferred. 274 Fed. 893. The considerations that have been stated apply even more obviously to this case. The order is affirmed."

The "considerations stated" were that contracts of the character under which this indebtedness arose were those of the Fleet Corporation because "the whole frame of

the instrument seems to us plainly to recognize the corporation as the immediate party to the contract" (Opinion, p. 569). That is to say, this Court, like Judge Rogers, held that the Fleet Corporation contracted as principal and not as agent, although in so doing, it may have acted as a public agent. If, on this account, the rights acquired by the Fleet Corporation were those of a principal, its liabilities were as clearly such.

It is true that since the *Sloan* case it has been held that the preferences of the United States extend only to claims for taxes. *Davis* v. *Pringle*, 268 U. S. 315. Hence even if the claim had been that of the United States it would not have been entitled to the priority asserted. It had not been so decided at that time, and although the three dissenting Justices concurred in the decision in the *Eastern Shore* case on this ground, the majority of the Court did not put its decision on such ground but upon the ground that the contract was that of the Fleet Corporation.

In view of the fact that this case involved a question of substantive right and not of capacity to sue, it is difficult to perceive how the Fleet Corporation can contend that only the capacity of the Fleet Corporation to be sued and not the nature of the substantive rights and obligations arising from contracts such as these was decided in the *Sloan* case.

(d) *Each of the three cases decided rests upon a common ground, namely, that the substantive rights and obligations of the Fleet Corporation under contracts such as these were those of a principal.*

It was on this account that the Fleet Corporation was held suable in the first two cases, and that the claim

asserted in the third was held to belong to it as principal and not to the United States. If this conclusion be sound, then the question of liability as well as suability was determined in these cases. If, on the other hand, it is not sound, it is difficult to perceive upon what theory they were decided.

As indicating the contrary, some reliance is placed on the following statement in the dissenting opinion of the late Chief Justice Taft, concurred in by Messrs. Justices Van Devanter and Clarke:

> "The opinion of the court is carefully drawn and if its conclusion is to rest merely on the nice distinction that it does not clearly appear from a proper construction of the pleadings that the acts here complained of were acts done under authority delegated by the President to the Fleet Corporation, as his agent, then the question I have been discussing and which seems to me to be in these cases is not here decided, and will only arise on answer and evidence." (p. 572).

It would seem that the inference to be drawn from this is just the reverse of that which the petitioner draws. It is true that the late Chief Justice states that if the opinion is to rest on the nice distinction stated (which is the distinction now sought to be made), the question discussed in the dissenting opinion is not decided. It is equally true that he states that that question that the Fleet Corporation contracted as principal (the liability of the Fleet Corporation) "seems to me to be in these cases". That is to say the late Chief Justice appears to have construed the necessary effect of the decision as we have. Reading the majority and dis-

senting opinions together, it seems to be reasonably plain that the question upon which the court divided, was that of the capacity in which the Fleet Corporation acted, and whether it bound itself as principal or not. This conclusion is strengthened by the comments made by the late Chief Justice in respect of the effect of the decision in placing the jurisdiction for suits such as these in the district and state courts instead of in the Court of Claims. The importance of the determination of the forum was not merely in respect of where suit might be instituted, but where judgment might be obtained, as indicated by the observations made in the dissenting opinion.

2. The respondents' contention is sustained by subsequent decisions of this Court and by the decision of every circuit court of appeals which has passed upon the question.

In *United States* v. *Wood,* 290 Fed. 109, the Circuit Court of Appeals for the Second Circuit dismissed a suit brought by the United States to obtain a preference in respect of a debt arising out of a similar contract. In so doing it said:

> " * * * The debt set forth in the complaint is one due, not to the United States, but to the Fleet Corporation as principal and independent contractor, * * * " (p. 115).

This Court affirmed (263 U. S. 680) in a *per curiam* opinion upon authority of *Fleet Corporation* v. *Wood* (title

of the last three cases in the *Sloan* case). In so doing it again held that the rights and obligations arising under such contracts were those of the Fleet Corporation as principal. The petitioner seeks to qualify the effect of this decision by something thereafter said about it by the Circuit Court of Appeals in *Whan* v. *Green Star SS. Corp.*, 22 Fed. (2d) 483. But in quoting therefrom petitioner fails to quote the immediately preceding paragraph in which that Court reiterated that the claim was not that of the United States but of the Fleet Corporation and was declared so to be by this Court as well as by it. In any event, *United States* v. *Wood* was specifically affirmed by this Court upon the authority of the *Sloan* case.

In *Providence Corporation* v. *Downey Shipbuilding Corporation*, 294 Fed. 641 (certiorari denied 264 U. S. 586), and in *Smith* v. *Fleet Corporation*, 26 Fed. (2d) 337 (certiorari denied 278 U. S. 628) the same Circuit Court of Appeals again held that the substantive rights and liabilities of the Fleet Corporation under contracts executed in its own name, although acting for the United States, were those of a principal. These cases are disposed of by petitioner (Brief, pp. 28-29) by the statement that they were decided by the same court whose decision is here being reviewed. This Court, however, also denied certiorari in both. While such denial is not equivalent to an affirmance, nevertheless, when the public character of the question involved is considered, and when it is recalled that these denials followed the decision in the *Sloan* case and in *United States* v. *Wood*, their denial would appear to have some significance in respect of the

interpretation placed by this Court upon its own decision in the *Sloan* case.

To the same effect are the decisions of every other circuit court of appeals, which has passed upon the question. *United States* v. *Matthews,* 282 Fed. 266 (9th C. C. A.), *Banque Russo Asiatique London* v. *Fleet Corporation,* 286 Fed. 918 (3d C. C. A.), *Shooters Island Shipyard Co.* v. *Standard Shipbuilding Corporation and Fleet Corporation,* 293 Fed. 706, 3 Fed. (2d) 1022 (3d C. C. A.), *Fleet Corporation* v. *Rosenberg Bros. & Company,* 12 Fed. (2d) 721 (9th C. C. A., reversed on other grounds, 276 U. S. 202), *Cohn* v. *Fleet Corporation,* 20 Fed. (2d), 56 (6th C. C. A.), *Fleet Corporation* v. *Tabas,* 22 Fed. (2d) 398 (3d C. C. A.), *Fleet Corporation* v. *South Atlantic Dry Dock,* 300 Fed. 56 (5th C. C. A.). See also an additional decision of the Second Circuit in *Dietrich* v. *Fleet Corporation,* 9 Fed. (2d) 733, and decision of the Court of Appeals of the District of Columbia in *Eichberg* v. *Fleet Corporation,* 273 Fed. 886, 14 Fed. (2d) 248. To the same effect are the following decisions of district courts, which went no higher, and of state courts: *Florida Grain & Elevator Co.* v. *Fleet Corporation,* 300 Fed. 169 (D. C., S. D. Fla.); *Haines* v. *Lone Star Shipbuilding Co.* (Fleet Corporation, Garnishee) 268 Pa. 92, 110 Atl. 788; *Cox* v. *Lykes Bros. and Fleet Corporation,* 237 N. Y. 376, 382; *Traylor Engineering & Mfg. Co.* v. *Fleet Corporation,* 277 Fed. 248 (D. C., E. D. Pa.); *Wright* v. *Fleet Corporation,* 285 Fed. 647 (D. C., S. D. N. Y.).

All these cases are disposed of by petitioner as being based upon an erroneous interpretation of the decision of

this Court in the *Sloan* case. Perhaps so. But their unanimity, although not binding on this Court, should be in some degree persuasive that it is the petitioner's interpretation of that case and not ours which is erroneous.

The only case to the contrary is an opinion by the District Court of Oregon cited by the petitioner, *Astoria Marine Works* v. *Fleet Corporation,* 295 Fed. 415, which is clearly in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit, cited above, as well as with the otherwise unbroken line of authority.

Petitioner's assertion that *Fleet Corporation* v. *Galveston Dry Dock Company,* 13 Fed. (2d) 607 (5th C. C. A.) is in conflict, is erroneous. An examination of the opinion discloses that the contract reviewed showed on its face that it was not the contract of the Fleet Corporation but of the Shipping Board, and in the last paragraph it is expressly stated that the question of the Fleet Corporation's liability on the contracts made in its own behalf is not presented. The same Court in *Fleet Corporation* v. *South Atlantic Dry Dock, supra,* held that it was personally liable under such a contract.

Equally erroneous is the suggestion that the recent decision of the Ninth Circuit in *United States* v. *Skinner & Eddy,* 35 Fed. (2d) 889, is in conflict with its prior decision in *United States* v. *Matthews, supra.* The *Skinner & Eddy* case was between the United States and the contractor, not between the Fleet Corporation and the contractor, and the claim asserted by the contractor being for just compensation on account of the cancellation of his contract was one exclusively cognizable by the Court of Claims.

3. The hardship resulting from the long lapse of time since the decision in the *Sloan* case, during which this and similar claimants have proceeded on the supposed authority of the *Sloan* case, as interpreted in the foregoing decisions, and have become barred from prosecuting their claims against the United States in the Court of Claims, is suggestive that the *Sloan* case and the decisions interpreting it should be neither overruled nor qualified except for the most cogent reasons.

Section 154 of the Judicial Code (United States Code, Title 28, § 260, R. S. § 1067, March 3, 1911, c. 231, § 154, 36 Stat. 1138) provides as follows:

> *"Claims pending in other courts excluded.* No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States."

By reason of this statute neither the respondent nor any other person similarly situated could concurrently sue the Fleet Corporation, suable only in a district or state court, and the United States, suable only in the Court of Claims. He was compelled to determine at his peril which course to pursue. Suit by respondent in the Court of Claims is now barred by the statute of limitations. It is said in the petition for certiorari (page 7)

that there are other cases pending involving the same question between other contractors and the Fleet Corporation. In view of the time which has elapsed since the conclusion of the War, it is fair to assume that the statute of limitations has likewise run in all such cases. The effect either of overruling the *Sloan* case or of the qualification suggested, therefore, would be to permit both the Government and the Fleet Corporation in this and all other similar cases to escape liability except upon such settlement as the Government was willing voluntarily to make.

The *Sloan* case was decided May 1, 1922. In deciding it, the Court said that the conclusion reached was "led up to and almost required by the decisions heretofore reached in *The Lake Monroe*, 250 U. S. 246 and *United States* v. *Strang*, 254 U. S. 491," in each of which the question was one of substantive law and not of capacity to sue or be sued.

In November, 1923, this Court decided *United States* v. *Wood, supra*. In 1924 it denied writ of certiorari in *Providence Engineering Corporation* v. *Downey Shipbuilding Corporation, supra*. As previously stated, in both of these cases the question was one of substantive right and not of capacity to be sued. Thereupon followed the multitude of cases cited above, similarly construing the opinion of this Court in the *Sloan* case and defining the substantive rights of the parties.

It is respectfully submitted that with this judicial history before him any lawyer required to elect between suing the Fleet Corporation or the United States would have sued the former, and that any lawyer adopting the contrary course would have been negligent in the protection of his client's interest. Now to qualify the de-

cision in the *Sloan* case, after the statute of limitations has run, would impose such a hardship upon claimants acting upon its supposed authority as to be suggestive, if not persuasive, that such qualification or reversal should not be made in the absence of the most cogent reasons.

4. The decision of the court below is not in conflict with the cases cited by the petitioner, but is in harmony with settled principles of law governing liability of an agent (whether private or public) contracting as principal, and is consistent with the congressional and executive purpose in choosing a private corporation as the agency for the exercise of powers conferred by the Act of June 15, 1917.

Hodgson v. *Dexter*, 1 Cranch 345, and *Parks* v. *Ross*, 11 How. 362, cited by the petitioner, were called to the attention of the Court in the *Sloan* case (brief of counsel for Fleet Corporation, 258 U. S., at p. 553) in support of the very argument now renewed. They were also referred to in the opinion of the Second Circuit in *Dietrich* v. *Fleet Corporation*, *supra*, and of the Third Circuit in *Fleet Corporation* v. *Tabas*, *supra*.

Moreover, *Hodgson* v. *Dexter*, *supra*, and *Parks* v. *Ross*, *supra*, do not lay down the rule that a public agent may not be personally liable on a contract made by him on account of the Government, but only that a presumption arises that a public officer contracting on behalf of the Government does not intend to bind himself personally. This presumption may be overcome. *Gill* v. *Brown*, 12 Johnson, 385; *Walker* v. *Swartwout*, 12 Johnson, 444; *Nichols* v. *Moody*, 22 Barbour, 611

(General Term, Sup. Ct. N. Y.); *Crowell* v. *Crispin*, 4 Daly (N. Y.) 100; *Woodbridge* v. *Hall*, 47 N. J. L. 388; *Timken* v. *Tallmadge*, 54 N. J. L. 117, 22 Atl. 996; *Cook* v. *Irvine*, 5 Serg. & R. 492 (Sup. Ct. Pa.); *Ogden* v. *Raymond*, 22 Conn. 379; *Providence* v. *Miller*, 11 R. I. 272. See also Story on Agency (9th Edit.), §§ 302, 303 and 306.

It is well settled that an agent may so contract as to become personally bound and that whether he has contracted as principal or agent is to be determined by the contract itself. *Whitney* v. *Wyman*, 101 U. S. 392. In executing contracts such as these which, in form and substance, as well as in manner of execution, were those of a principal, the Fleet Corporation became bound thereby as principal and any presumption which might otherwise have arisen by reason of its relations to the Government was completely overcome. This would appear to be the necessary effect of the decision in the *Sloan* case. Despite the statute, the executive orders and the recitals of representation, the contracts were held to be those of the Fleet Corporation, because they were in form and substance such, as well as because of their manner of execution.

After so stating, the Court said:

> "* * * The fact that the corporation was formed under the general laws of the District of Columbia is persuasive, even standing alone, that it was expected to contract and to stand suit in its own person, whatever indemnities might be furnished by the United States. * * *" (258 U. S. 570.)

This is suggestive that the presumption arising in cases of contracts executed by a natural person, acting as

agent of the Government, did not attach to contracts executed by the Fleet Corporation. The Fleet Corporation was a private corporation, having the corporate capacity to contract as principal. As such it was chosen as the agency to be employed to carry out the purposes of the Act of June 15, 1917. The legislative history of this Act is persuasive that it was so chosen because it was a private corporation, capable of contracting as principal, free from the restrictions by which an individual agent or government officer acting for the Government would be bound. While the President was left free to choose the agency through which he would act, the Act itself expressly referred to the Fleet Corporation by name and it was apparently contemplated and understood that it would be chosen as such agency. *The Lake Monroe*, 250 U. S. 246, 254.

Contemplating this, the Act provides "that all moneys turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended." This provision, added in conference, was obviously for the purpose of permitting the Fleet Corporation, in the execution of powers which might be conferred upon it, to act as a private corporation, free from governmental restrictions in its operations. If there be any doubt that such was its purpose, such doubt is removed by the explanation thereof as contained in the statement made by Senator Underwood, reporting to the Senate for the conferees the Bill which became the Act of June 15, 1917. Senator Underwood said (Cong. Record, Vol. 55. 65th Congress, p. 3549; R. 261):

"I was told by Gen. Goethals that under the terms of this bill, if passed, he would be named as the agency, or rather that the emergency fleet corporation, of which he is general manager, would be named as the agency to expend this money. He desired the authorization to come in that way, for this reason. He said that it would give him a broader latitude in which to make his contracts. He could make them as a corporation, and not be bound by the requirements of law that would restrict his action if he made them as a governmental officer; in other words, if he is designated as a governmental officer he would probably have to publish advertisements for bids in many cases, while acting for a corporation he would not have to do so. As a governmental officer in carrying out this provision he would have to make many reports and be delayed by red tape and technicalities that would not embarrass him if he were carrying on the transaction acting for a corporation. Of course, the corporation is owned by the Government and controlled by the Government; the Government is the entire corporation; but he expressed to me his view that he would have a greater latitude."

In speaking of the President's delegation of authority to the Fleet Corporation, the Court in *The Lake Monroe* case said:

"* * * And when in fact he designated the Fleet Corporation to exercise those powers so far as they pertained to the construction of vessels and the requisitioning of vessels in process of construction, and the Shipping Board so far as they applied to the operation, management, and disposition of vessels, it is to be presumed that he did so because of the general powers that al-

ready had been conferred upon them by law, * * * ." (p. 254).

And so, when the Court said in the *Sloan* case that in choosing this private corporation as an agency "it was expected to contract and to stand suit in its own person", it was only voicing the apparent purpose both of Congress and the President, as well as the interpretation placed upon such action in *The Lake Monroe*. See also *Skinner & Eddy Corp.* v. *McCarl*, 275 U. S. 1, 8, where it is pointed out that an important, if not the chief reason for so choosing the Fleet Corporation was to utilize its powers and its freedom from governmental restrictions as a private corporation to employ commercial methods in the performance of its delegated functions. It would therefore seem that the presumption arising in the case of contracts made by a public officer never arose in respect of contracts made by the Fleet Corporation, which were assumed to be its own contracts, unless specifically executed by it in the name of the United States, and as the latter's agent. Certainly, such presumption, if any, was entirely removed by the contracts themselves.

Furthermore, after the execution of these contracts, as well as in their execution, the Fleet Corporation acted as a private corporation in its dealings with Groton. It took as security for moneys loaned to Groton, mortgages on its property, in which there is no reference to the United States (R. 219, 220), and extended their payment by a written document referring in detail to the transaction involved in the making of the mortgages, containing no mention of the United States (Exhibit D, R. 220). In a suit instituted by the town of Groton to fore-

close a tax lien on the shipyard, the Fleet Corporation asked for judgment of foreclosure on such mortgages in its own name as principal, and not as agent, and without mention of the United States as a party in interest (R. 253). Thereafter, on April 18, 1923, it assigned these mortgages to the United States (Exhibit N, R. 224), for the consideration stated, without mention or reference to the United States except as assignee. There is nothing in the entire record indicating that it acted, at any time, otherwise than as principal.

Petitioner cites *Emergency Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415, as a case in which the status of the Fleet Corporation has been considered. But the status of the Fleet Corporation was thoroughly understood by the Court when it decided the *Sloan* case. Its relations to the United States were before the Court and due account thereof taken in the decision. The question presented in the *Western Union* case was whether the Fleet Corporation was entitled to Government rates under the Post Roads Act. The Court held that it was. The opinion points out that for 55 years the Government rate had been extended to all sorts of Governmental agencies not technically departments of the Government, such as the Smithsonian Institute, the Pan-American Union, etc. Citing *United States* v. *Alabama Great Southern R. R. Co.*, 142 U. S. 615, the Court held that the contemporaneous construction consistently placed upon the Act was not only persuasive but decisive of the case. As stated by the Court, the question was one of statutory construction, and the ruling was that the Fleet Corporation was a department of the Government within the meaning of the Post

Roads Act. The question of its liability under contracts made in its own name as principal was not before the Court. Furthermore, although an agency of the United States (as stated to be in that case), the Fleet Corporation is nevertheless liable on contracts made in its own name as principal, even under the rule of *Hodgson* v. *Dexter, supra.*

III.

THE LIABILITY OF THE FLEET CORPORATION IS UNAFFECTED BY THE MERCHANT MARINE ACT OF JUNE 5, 1920.

Petitioner argues that the effect of this Act (41 Stat. 988-989, 990, 993)* is to relieve the Fleet Corporation of liability under these contracts if executed by it as principal, and to substitute therefor the liability of the United States, to be enforced by suit in the Court of Claims. On the contrary, it specifically preserves any existing cause of action against the Fleet Corporation. While it provides (Section 2 (*b*) (1)) for the assumption by the Shipping Board of "all contracts or agreements lawfully entered into before" its passage, under the various statutes enumerated (a provision broad enough to cover these contracts), Section 2 (*b*) (2) expressly provides:

> "(2) All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (*c*) of this section, as if this Act had not been passed."

Subdivision (*c*) upon which the petitioner relies is as follows:

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* The text of the relevant portions of the Merchant Marine Act of June 5, 1920, is set forth in the Appendix, post, at page vi.

"(*c*) As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided*, That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed."

It will be observed that the proviso providing for suit against the United States follows immediately after reference to the determination of payment of just compensation. The Emergency Shipping Fund provisions of the Act of June 15, 1917, in addition to conferring upon the President authority to contract through agencies of his choosing for the construction of ships, authorized him to modify, suspend, cancel or requisition contracts and to requisition plants and ships and provided that, upon the exercise of these latter powers, the United States should make just compensation to be determined by the President, conferring upon the owner the right, if dissatisfied, to accept 75% of the compensation so fixed and to sue the United States for such further sum as added thereto would provide just compensation. The first clause of subdivision (*c*) authorizing the Board to settle and liquidate matters arising out of the exercise of the President's powers, standing alone, would not have been

sufficient to transfer to the Board the power to fix just compensation conferred by the President upon the original Act. At least its sufficiency for this purpose would be open to question. This additional authority was therefore specifically conferred by the second clause, to which the proviso is attached and which clearly refers to the decisions of the Board in the determination of just compensation.

The phraseology of the proviso expressly excludes the interpretation placed upon it by the petitioner. The right to sue is to be the same as "if the decision had been made by the President of the United States under the acts hereby repealed". But the President of the United States, under the acts hereby repealed, had no authority to decide the amount due to a contractor under a contract made by the Fleet Corporation, even though acting under his executive orders in the execution of such contract. The principal, if not the only cases in which "under the Acts repealed" the President was empowered to make decisions on account of which, if dissatisfied, suit might be brought against the United States were cases involving the determination of just compensation. This it was provided should be made in the first instance by the President or by his delegated agent. With the repeal of the acts by which such authority was conferred and by which the right to sue the United States on account of such determination, if deemed inadequate, was accorded it became necessary to provide substitute machinery for that displaced by such repeal. This Congress did in express terms by providing that the "board instead of the President shall exercise" such powers and duties "relating to

the determination and payment of such just compensation" and by providing that any person dissatisfied therewith "shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed." There is no ambiguity in the proviso, which is expressly limited to suits for just compensation, where the party is dissatisfied with the determination which the President was originally empowered to make, a power transferred by this section to the Board. It is not susceptible, even by implication, of being interpreted so as to destroy the existing liability of the Fleet Corporation and existing remedies thereon, and to compel suits thereon to be brought against the United States in the Court of Claims.

Furthermore, if such be the interpretation to be placed upon the proviso of subdivision (*c*), its effect is completely to destroy the preservation of the remedies attempted to be preserved by paragraph (2). If decision of the Board means a decision by it in the adjustment, settlement and liquidation of any or all matters arising out of the contracts, which by paragraph (1) it was directed to carry out, then none of the remedies accruing under such contracts and referred to in paragraph (2) were preserved. Petitioner's interpretation of the proviso of subdivision (*c*), therefore, is completely destructive of paragraph (2).

Finally, if Congress had intended any such unusual result as the extinction of the Fleet Corporation's liability, it would have done so by direct enactment and not by the backhand method attributed to it by petitioner.

And certainly it would not have gone through the form of preserving all existing remedies growing out of such contracts in one section of the Act and then destroy them in a succeeding section by requiring a decision of the Board and limiting the contractor to a suit against the United States which could be instituted only after such decision.

It is also said that by the Merchant Marine Act of 1920 Congress stripped the Fleet Corporation of all property and cannot be assumed to have preserved a mere naked right to obtain a judgment against an agent having no means of satisfying it. The same argument was made in the *Sloan* case and was disposed of by the Court in the following language:

> "* * * The transfer of the property of the Fleet Corporation to the Shipping Board by the Act of June 5, 1920, c. 250, § 4, 41 Stat. 988, 990, may affect the value of the remedy afforded by the present suit but not the jurisdiction of the Court" (p. 568).

United States v. *Pfitsch*, 256 U. S. 547 and *Nassau Smelting & Refining Works* v. *United States*, 266 U. S. 101, cited by petitioner, have nothing in common with this case. The first was a just compensation case arising under the Lever Act, and the second under the Dent Act. This is not a just compensation case but a suit to enforce contractual liability of the Fleet Corporation on contracts made by it.

Nor is petitioner's case aided by reference made to suits in Admiralty Act (Act of March 9, 1920, c. 95, 41 Stat. 525), and decisions thereunder. That Act

provides in terms for the substitution of new remedies for old in respect of vessels belonging to the United States. The new remedies thus created have been held in the cases cited to be exclusive. This Act, on the contrary, provided in express terms for the preservation of all existing rights and remedies. Cases arising under the Suits in Admiralty Act, therefore, are not applicable here.

The statute here in question must be construed as written, not as it might have been written. As written, it in terms preserved all existing remedies, whether against the United States or against the Fleet Corporation, as the case might be, substituting, however, the Board for the President in the determination of just compensation in the first instance in those cases involving such determination. This is not such a case and the liability of the Fleet Corporation on these contracts is in no wise affected by the Merchant Marine Act.

Doubt likewise arises as to the constitutionality of these provisions of the Merchant Marine Act as interpreted by the petitioner. The liability of the Fleet Corporation was contractual. It is thus implicit in the petitioner's argument that one party to a contract may be required by statute to relieve the other, and accept in lieu thereof a third party designated by the legislature. As between private parties, we should assume that this could not be done. Since the Fleet Corporation was a private corporation having an identity separate from that of the United States, it would also appear to be doubtful whether its liability on existing contracts could be destroyed by legislative enactment any more than that of any other private corporation. However this

may be, the statute does not so provide, nor is it capable of such interpretation.

Respectfully submitted,

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RICHARD S. HOLMES,
Attorneys for Respondents.

Of counsel,
FREDERICK H. WOOD,
WILLIAM W. ROBISON.

APPENDIX.

A. Urgent Deficiency Act of June 15, 1917, c. 29, 40 Stat. 182-183, 217.

EMERGENCY SHIPPING FUND

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(*a*) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quality usually produced or capable of being produced by such person.

(*b*) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(*c*) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(*d*) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(*e*) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process

of construction or hereafter constructed, or any part thereof, or charter of such ship.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities or qualities of the ships or material so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: *Provided*, That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

* * * * *

SEC. 3. That the appropriations contained herein shall be available for the payment of obligations on account of the existing emergency incurred prior to the passage of this Act and which are properly chargeable to such appropriations.

B. Executive Order, July 11, 1917.

Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.

By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an Act of Congress entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said Act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requis-

tioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said Act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management, and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

WOODROW WILSON.

THE WHITE HOUSE, *July 11, 1917.*

C. Executive Order, December 3, 1918.

Delegating to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, powers granted to the President by Acts of Congress relative to the emergency shipping fund and approved on or prior to November 4, 1918.

Whereas, by Executive Order, No. 2664, dated July 11, 1917, I delegated to the United States Shipping

Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved June 15, 1917; and

Whereas, since the issuance of said Executive order, the said powers granted in said Act have been variously affected or extended by the section entitled "Emergency shipping fund" of the urgent deficiency appropriation Act approved October 6, 1917, by Public Act No. 138, Sixty-fifth Congress, approved April 22, 1918, amending said section of said Act of June 15, 1917, and by the sections entitled "Emergency shipping fund" in the sundry civil appropriation act approved July 1, 1918, and in the first deficiency appropriation act, 1919, approved November 4, 1918, respectively:

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said order No. 2664, but in no way limiting or restricting the effect thereof, or of Acts heretofore done in pursuance thereof, I do hereby delegate all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive Order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways and piers, and to constructed vessels or parts thereof or charters therein; to the operation, management, and dis-

position of such dry docks, marine railways, piers, and vessels; and to such other matters as are not herein mentioned.

3. All acts heretofore done by said corporation or by said board, with reference, respectively, to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

WOODROW WILSON.

THE WHITE HOUSE, *December 3, 1918.*

D. Merchant Marine Act of June 5, 1920, c. 250, 41 Stat. 988-989, 990, 993.

SEC. 2. (*a*) That the following Acts and parts of Acts are hereby repealed, subject to the limitations and exceptions hereinafter, in this Act, provided:

(1) The emergency shipping fund provisions of the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes," approved June 15, 1917, as amended by the Act entitled "An Act to amend the emergency shipping fund provisions of the Urgent Deficiency Appropriation Act, approved June 15, 1917, so as to empower the President and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes," approved April 22, 1918, and as further amended by the Act entitled "An Act making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1919,

and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918;

(2) Section 3 of such Act of April 22, 1918;

(3) The paragraphs numbered 2 and 3 under the heading "Emergency shipping fund" in such Act of November 4, 1918; and

(4) The Act entitled "An Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes," approved July 18, 1918.

(5) Sections 5, 7, and 8, Shipping Act, 1916.

(*b*) The repeal of such Acts or parts of Acts is subject to the following limitations:

(1) All contracts or agreements lawfully entered into before the passage of this Act under any such Act or part of Act shall be assumed and carried out by the United States Shipping Board, hereinafter called "the board."

(2) All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (*c*) of this section, as if this Act had not been passed.

(3) The repeal shall not have the effect of extinguishing any penalty incurred under such Acts or parts of Acts, but such Acts or parts of Acts shall remain in force for the purpose of sustaining a prosecution for enforcement of the penalty therein provided for the violation thereof.

(4) The board shall have full power and authority to complete or conclude any construction work begun in

accordance with the provisions of such Acts or parts o
Acts if, in the opinion of the board, the completion o
conclusion thereof is for the best interests of the Unite
States.

(*c*) As soon as practicable after the passage of thi
Act the board shall adjust, settle, and liquidate all mat
ters arising out of or incident to the exercise by o
through the President of any of the powers or dutie
conferred or imposed upon the President by any suc
Act or parts of Acts; and for this purpose the board
instead of the President, shall have and exercise any o
such powers and duties relating to the determination an
payment of just compensation: *Provided,* That any per
son dissatisfied with any decision of the board shall hav
the same right to sue the United States as he would hav
had if the decision had been made by the President of th
United States under the Acts hereby repealed.

* * * * *

SEC. 4. That all vessels and other property or in
terests of whatsoever kind, including vessels or propert
in course of construction or contracted for, acquired b
the President through any agencies whatsoever in pur
suance of authority conferred by the Acts or parts o
Acts repealed by section 2 of this Act, or in pursuanc
of the joint resolution entitled "Joint resolution author
izing the President to take over for the United State
the possession and title of any vessel within its jurisdic
tion, which at the time of coming therein was owned i
whole or in part by any corporation, citizen, or subjec
of any nation with which the United States may be a
war, or was under register of any such nation, and fo
other purposes," approved May 12, 1917, with the ex
ception of vessels and property the use of which is in th
opinion of the President required by any other branch
of the Government service of the United States, are

hereby transferred to the board: *Provided*, That all vessels in the military and naval service of the United States, including the vessels assigned to river and harbor work, inland waterways, or vessels for such needs in the course of construction or under contract by the War Department, shall be exempt from the provisions of this Act.

* * * * *

SEC. 12. That all vessels may be reconditioned and kept in suitable repair and until sold shall be managed and operated by the board or chartered or leased by it on such terms and conditions as the board shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act; and the United States Shipping Board Emergency Fleet Corporation shall continue in existence and have authority to operate vessels, unless otherwise directed by law, until all vessels are sold in accordance with the provisions of this Act, the provision in section 11 of the "Shipping Act, 1916," to the contrary notwithstanding.

FILE COPY

APR 16

CHARLES ELMORE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 345

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, Sued in the Name of the UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Petitioner

against

P. LEROY HARWOOD, as Trustee in Bankruptcy of Groton Iron Works, and ISAAC SIEGEL and JOHN M. P. THATCHER, as Ancillary Receivers of United States Steamship Company, Intervenors
Respondents

Supplemental Brief Submitted in Behalf of Respondents, Isaac Siegel and John M. P. Thatcher, as Ancillary Receivers of United States Steamship Company

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April, 1930

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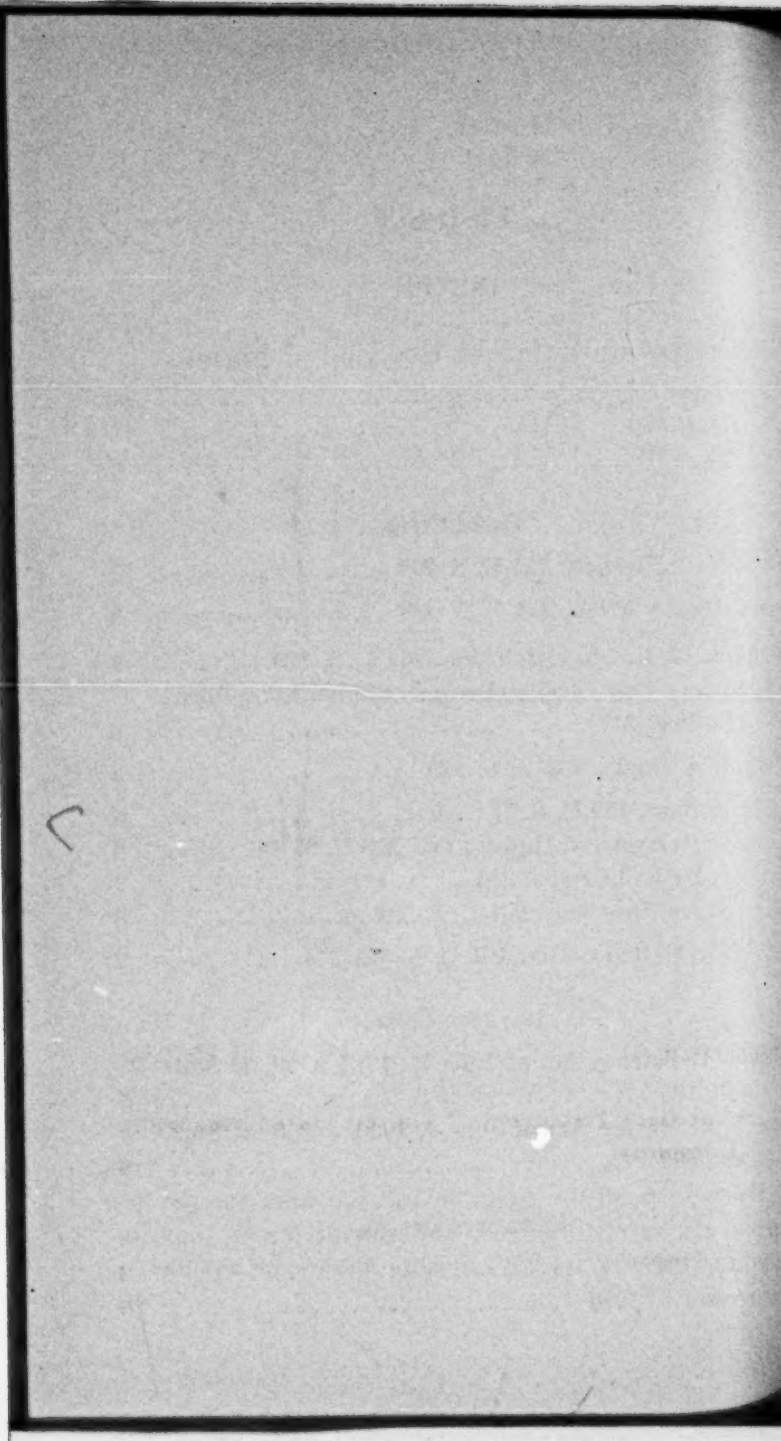


IN THE

Supreme Court of the United States

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, Sued in the Name of the UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, *Petitioner,* *against* P. LEROY HARWOOD, as Trustee in Bankruptcy of Groton Iron Works, and ISAAC SIEGEL and JOHN M. P. THATCHER, as Ancillary Receivers of United States Steamship Company, Intervenors, *Respondents.*	October Term, 1929. No. 345.

Supplemental Brief Submitted in Behalf of Respondents, Isaac Siegel and John M. P. Thatcher, as Ancillary Receivers of United States Steamship Company.

These respondents adopt in full the brief for the respondents heretofore filed, and submit for the consideration of the Court the following additional matters.

I.

It is urged under the first point of petitioner's brief that in executing the contracts here involved and in particular the contract of March 26, 1920, the Fleet Corporation was acting as the agent of a disclosed sovereign principal. In determining who are the parties to a contract the intention of the parties must govern. This intention must be discovered from the wording of the instrument itself, or if that is ambiguous from all of the surrounding circumstances. It is submitted that in the case of the contract of March 26, 1920, the wording shows clearly that the Fleet Corporation, and not the United States, was the party contracting with Groton Iron Works, and this conclusion is confirmed by consideration of the wording of the contracts to which this contract is supplemental. If, however, there should be any doubt on this point, the attention of the Court is invited to the provisions of the other agreements executed by the parties in immediate connection with the contract of March 26, 1920.

In section (c) of Article II of the contract of March 26, 1920 (R. 77), it is provided as one of the bases of the contract that the mortgages held by the Fleet Corporation on the plant of Groton should be extended until July 1, 1921. Accordingly an extension agreement dated March 25, 1920 (Defendant's Exhibit D, R. 220), was executed between the Fleet Corporation and Groton, in which no mention is made of the United States. This agreement recites (R. 220) loans and advances by the Fleet Corporation to Groton of $1,800,000, which amount had been reduced by the application and credit of a certain portion of the contract price for the construction of the steamship "Tollard" by Groton for the Fleet Corporation. It further recites the receivership of Groton, the desire of

Groton to resume possession of its property, its representation that this cannot be done without the extension of the mortgages and the willingness of the Fleet Corporation to cooperate, and provides that the Fleet Corporation extends and postpones the maturity of the principal sum due on the mortgages until July 1, 1921 (R. 221). In this extension agreement the Fleet Corporation is clearly the principal. It is not even recited as representing the United States. Surely, if the contract of March 26, 1920, was between Groton and the United States, the Fleet Corporation in this closely related extension agreement would never have contracted as principal in such unqualified fashion.

The uncontradicted evidence shows that the contract of March 26, 1920, was not carried out in accordance with its terms. Instead within a month of its execution, a new arrangement was made by which the Fleet Corporation withdrew the application which it had made for a new receivership and continued to advance the funds necessary for the payrolls and the purchase of materials. This new arrangement is evidenced by a memorandum (R. 143) prepared by Mr. Gillen and approved by Mr. Nottingham, counsel for the Fleet Corporation, and signed by Messrs. Gillen, Nottingham and Dean (R. 144). A copy of this memorandum was delivered to Groton (R. 140). No mention is made therein of the United States. The memorandum speaks of the adjustment of the disputes between the Fleet Corporation and Groton, and states that the signers are of the opinion the guarantee of performance by Virginia Shipbuilding Corporation "more than amply protects the Emergency Fleet Corporation" (R. 144).

This memorandum resulted in a formal resolution of the Fleet Corporation on April 29, 1920 (Defendant's Exhibit S, R. 232). This resolution commences:

> "Whereas the Fleet Corporation has a contract with the Groton Iron Works of March 26, 1920, to provide working ship construction funds to the extent of $16,155,648, and in addition thereto agrees to give a credit of one-half million dollars under terms to said corporation, together with ship property and materials in the value of $325,000; * * *."

The resolution then directs an advance to Groton of $1,000,000, and provides:

> "* * * that this advance shall be made only upon the condition that the same shall not prejudice the rights of the Fleet Corporation under the contract of March 26, 1920, * * *."

There is no reference here to the United States. The language of all of these documents is the language of lawyers who must have realized the difference between the Fleet Corporation contracting as a principal and the Fleet Corporation contracting solely as an agent of the United States.

These considerations dispose effectively of the contention of petitioner under its second point that the contract of March 26, 1920, effected a novation by which the Fleet Corporation was relieved of liability on its previous contracts and the United States was substituted in its place. A novation is unusual and the requisites therefor are correctly stated at page 33 of petitioner's brief. If a novation had been intended it is inconceivable that within a month after the execution of the contract, an attorney for the Fleet Corporation (the party claiming to be relieved) should describe the contract as one between the Fleet Corporation and Groton to provide working ship construction funds. This argument must be deemed an afterthought, entirely foreign to the actual intention of the parties to the contract.

II.

In support of its contention that the contract of March 26, 1920, was made between the United States and Groton and not between the Fleet Corporation and Groton, petitioner relies strongly upon the use of the words "just compensation" in paragraphs (1) and (2) of Article III (R. 78, 79) of the contract of March 26, 1920. The argument seems to be that since upon the cancellation of a contract under the powers conferred on the President by the Emergency Shipping Fund provisions of the Act of June 15, 1917 (c. 29, 40 Stat. 182, 183), the contractor was entitled to just compensation, to be determined by the President, and that the payment thereof was an obligation of the United States, the Fleet Corporation in executing the contract was providing for the discharge of an obligation of the United States and therefore must have acted as its agent. Since there is no evidence that the President ever determined the just compensation to be paid to Groton for the cancellation of any of its contracts, this argument rests upon the assumption that the Fleet Corporation not only had the Presidential power of cancellation, but also the Presidential duty of determining just compensation. The duty of determining just compensation is imposed on the President by the third paragraph of the Act of June 15, 1917 (c. 29, 40 Stat. 183). It is distinctly a duty, and not a power, and therefore could not be delegated under the provisions of the fourth paragraph which provides only for the delegation of the "power and authority" vested in him by that Act. What this "power and authority" is appears from the first paragraph by which the President is "authorized and empowered" to do the specific things described in the following five subdivisions.

This is all that can be delegated under the fourth paragraph. Neither the Executive Order of July 11, 1917, nor the Executive Order of December 3, 1918, attempts to impose the performance of the duty of determining just compensation on the Fleet Corporation, nor so far as appears has the Fleet Corporation ever assumed to make such determination. Petitioner's argument therefore fails completely. The Fleet Corporation could not have been discharging the obligation of the United States, since that obligation was to make just compensation to be determined by the President, and the Fleet Corporation was never authorized to make this determination or to discharge this obligation.

It did have the right, however, as one party to a contract to cancel or modify the same and to provide by agreement with the other party for the payment of compensation for damages for such modification or cancellation. This right it exercised in the contract of September 30, 1918 (R. 44), which states in the preamble that it is the desire of both parties to alter the contract of June 15, 1917 (R. 36), "for the purpose of effecting a cancellation by agreement of the construction of four of said hulls." Paragraph (e) of Article II of the contract of March 26, 1920, provides for just such a "cancellation by agreement." This was within the power of the Fleet Corporation as party to the contract, whereas the determination of just compensation for a cancellation by the United States was not. It should be noted that this paragraph reads that "all obligations of the owner to the contractor or to the receivers, arising out of the suspension and cancellation of the three hulls, 10 to 12, inclusive, under contract 225 S. C. are settled and adjusted at the amount of $500,000, * * *" (R. 77). In Article III Groton accepts this sum and the property specified for the suspension

and cancellation of contract 15 W. H. as "just compensation and in accord and satisfaction for said suspension and cancellation" (R. 78, 79). This is the language of an ordinary contractual cancellation. It does not mention the United States, and the fact that Groton agrees that the compensation is "just" is not a recognition that the Fleet Corporation was performing the Presidential duty of awarding just compensation under the Emergency Shipping Fund provisions of the Act of June 15, 1917.

III.

Petitioner's argument under the third point of its brief, that the Merchant Marine Act of June 5, 1920 (c. 250, 41 Stat. 988, 989), provides an exclusive remedy against the United States for the enforcement of contracts made by the Fleet Corporation prior to its enactment, ignores certain well-established rules of statutory construction. Petitioner's construction makes the Act operate retrospectively, and takes away rights already vested, substitutes new remedies and imposes new obligations in respect to matters which had been done in the past. Such a construction will not be adopted unless the words of the statute "are so clear, strong and imperative, that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied." *United States* v. *Heth*, 3 Cranch, 399, 413.

As this Court said in *White* v. *United States*, 191 U. S. 545, at page 552:

> "Where it is claimed that a law is to have a retrospective operation, such must be clearly the intention, evidenced in the law and its purposes, or the court will presume that the lawmaking power is acting for the future only and not for the past; that it is enacting a rule of conduct which shall

> control the future rights and dealings of men, rather than review and affix new obligations to that which has been done in the past."

To the same effect are *United States* v. *Burr*, 159 U. S. 78, 82-83; *Shwab* v. *Doyle*, 258 U. S. 529, 534; *Llewellyn* v. *Frick*, 268 U. S. 238, 252.

Petitioner's construction likewise renders the statute of doubtful constitutionality not only under the Fifth Amendment as depriving Groton and other contractors with the Fleet Corporation of rights acquired against the Fleet Corporation under the contract, without due process of law, but also under the Seventh Amendment as depriving such contractors of the right to a trial by jury of the issues involved in any action at common law for breach of the contract and substituting in place thereof an action in the Court of Claims against the United States.

This Court said in the case of *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, at page 390:

> "But, as this Court often has held, 'a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.' *United States* v. *Jin Fuey Moy*, 241 U. S. 394, 401; *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407-408; *Baender* v. *Barnett*, 255 U. S. 224."

In the case at bar it is quite unnecessary to construe the statute as providing that after its enactment all suits against the Fleet Corporation arising out of prior contracts are abolished and that the only remedy of an aggrieved contractor is by suit against the United States in the Court of Claims. Section 2 (b) (2) of the Act specifically preserves the "remedies" accruing or accrued as a result of any prior contract or agreement. Nothing could

show more clearly the Congressional intent that a contractor was not to be deprived of his right to trial in the District Court on a contract made with the Fleet Corporation as principal by reason of the change in the powers and status of the Fleet Corporation contemplated by that Act. Even without the aid of the principles of statutory construction above referred to this would be sufficient to preserve the right of Groton to maintain this suit. With the aid of these principles this conclusion cannot be escaped.

Petitioner relies upon the fact that this section provides that these rights, interests and remedies "may be exercised and enforced in like manner, subject to the provision of subdivision (c) of this section, as if this Act had not been passed." It is difficult to see how this provision in any way changes the obvious meaning of the foregoing words. Subdivision (c) simply provides that the Shipping Board shall in the future adjust, settle and liquidate all matters arising out of the exercise by the President of any of the powers or duties conferred or imposed upon him by any of the preceding acts, and transfers to the Shipping Board the duty of making awards of just compensation, reserving to any dissatisfied person the right to litigate the propriety of an award made by the Board the same as if it had been made by the President.

The effect of this section was considered in the case of *Providence Eng. Corp.* v. *Downey Shipbuilding Corp.*, 294 Fed. 641 (certiorari denied 264 U. S. 586), in which it is said at page 657:

> "Subdivision (c) has no bearing upon the question now being discussed. It relates to the liquidation of matters incident to the exercise by or through the President of the powers conferred or duties imposed upon him by any of the acts or parts of acts repealed."

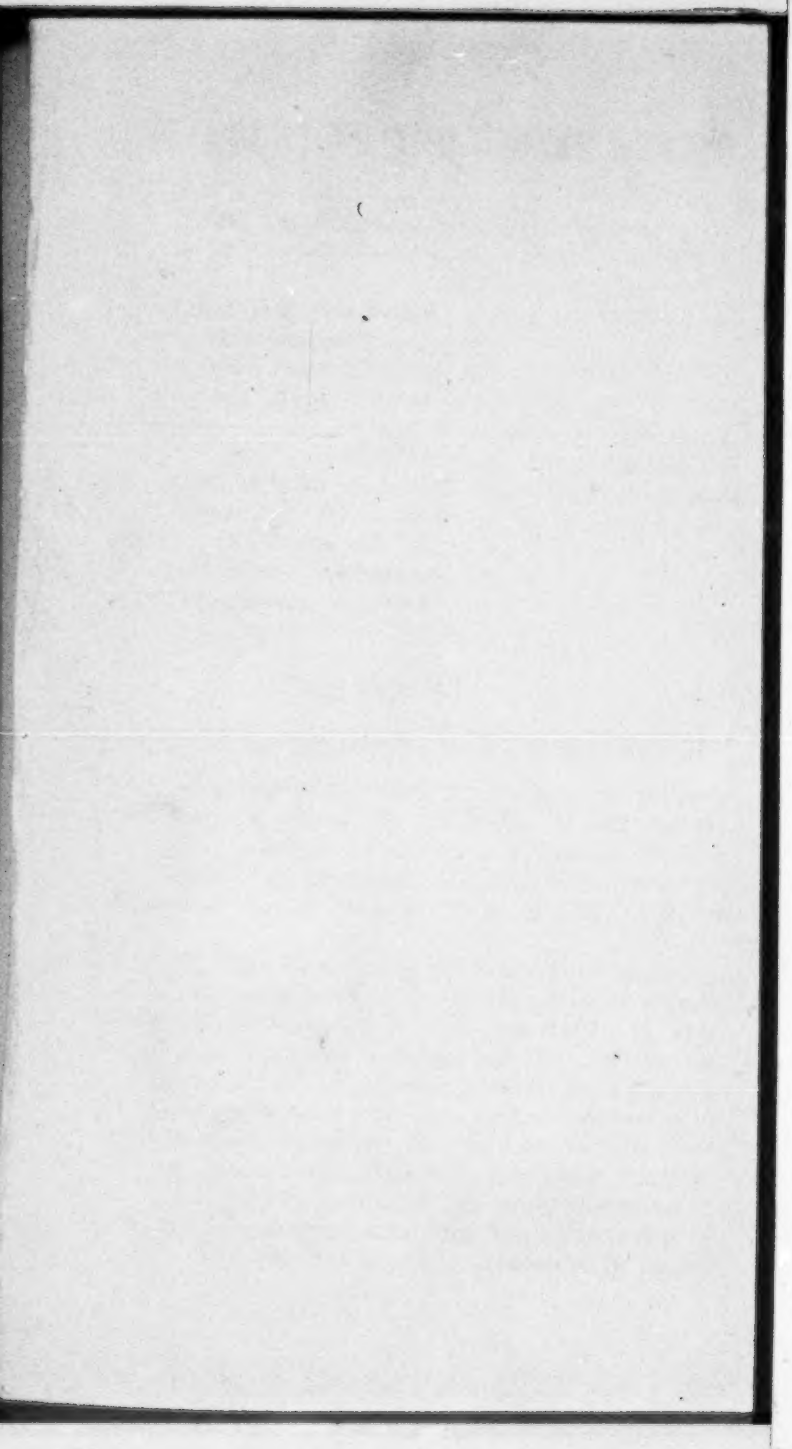
This section has therefore no possible bearing on the question of the right of Groton to maintain this action. Here there was no question of an award by the President or by the Shipping Board or of adjustment, settlement, or liquidation by the Board of matters arising out of the powers and duties of the President under the former acts. The only question here is the liability of the Fleet Corporation to account under a series of contracts made by it as principal before the Act in question was passed. To say that a statute regulating the future powers and duties of the Shipping Board somehow relieves the Fleet Corporation of this obligation is not to construe but to rewrite the statute.

For all of the reasons set forth above and in the brief heretofore filed it is submitted that the judgment of the Circuit Court of Appeals for the Second Circuit should be affirmed.

April, 1930.

Respectfully submitted,

W. H. L. EDWARDS,
RICHARD S. HOLMES,
Counsel for Respondents Isaac Siegel and John M. P. Thatcher, as Ancillary Receivers of United States Steamship Company.



SUPREME COURT OF THE UNITED STATES.

No. 345.—October Term, 1929.

United States Shipping Board Merchant Fleet Corporation, sued in the name of The United States Shipping Board Emergency Fleet Corporation, Petitioner,
vs.
P. Leroy Harwood, as trustee in bankruptcy of Groton Iron Works, and Isaac Siegel and John M. P. Thatcher, as Ancillary Receivers of United States Steamship Co., Intervenors.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[May 19, 1930.]

Mr. Justice Stone delivered the opinion of the Court.

In this case certiorari was granted, 280 U. S. —, to review a ruling of the Court of Appeals for the Second Circuit that the Fleet Corporation, is subject to suit upon a contract which it entered into, acting as an agency of the United States under the Urgent Deficiencies Act of June 15, 1917, (40 Stat. 182) as amended.

On June 15, 1917, the Fleet Corporation contracted with Groton Iron Works for the construction of twelve wooden ships, reduced to eight by contract of September 30, 1918. On August 11, 1917, and April 20, 1918, contracts were executed, each for the construction of six steel ships. After the armistice the Fleet Corporation gave directions to suspend work on a part of the steel ships. The Iron Works became financially involved and, the Fleet Corporation having advanced large sums to it, negotiation for a settlement of various differences between the two corporations resulted in the contract between it and the Fleet Corporation of March 26, 1920. This described the Fleet Corporation as "repre-

senting and acting . . . for and in behalf of the United States of America (hereinafter referred to as the owner)". It cancelled the earlier contracts, with some exceptions relating to the completion of the steel ships, and settled and released numerous other claims not now important, saving certain claims growing out of a reconciliation of accounts, then in progress, to determine the amount due for certain work on the wooden ships.

The Iron Works, before its bankruptcy, brought the present suit in the Superior Court of Connecticut, which was removed to the District Court for Connecticut, where, respondent, the trustee in bankruptcy, having intervened, the complaint was reframed so as to pray the cancellation of the contract of March 26, 1920, as procured by duress and fraud, an accounting and judgment for such amounts as should be found to be due for breach of the earlier contracts. A fourth separate defense, which alone is presently involved, set up that with respect to all the transactions alleged in the bill of complaint, petitioner acted solely as an agency of the United States, under powers delegated to it by the President under the Urgent Deficiencies Act, and that with respect to those transactions it was under no personal liability and respondent's only remedy was against the United States.

The District Court confirmed findings of a special master, in favor of petitioner, on the issues of fraud and duress and his conclusion that the rights of the parties were fixed by the contract of March 26, 1920, but gave judgment, sustaining the fourth defense and dismissing the complaint. 26 F. (2d) 116. The Court of Appeals reversed the judgment, holding that the suit might be maintained against the petitioner, but limited the relief to an accounting under the contract of March 26, 1920. 32 F. (2d) 680.

Concededly, as both courts below and the special master agree, in entering into the several contracts referred to, the Fleet Corporation was acting as an agency of the United States as alleged. But all of the contracts were signed and sealed by the Fleet Corporation, which was referred to as a corporation organized under the laws of the District of Columbia and which promised to pay the stipulated price for the ships and to perform the other obligations of the contracts, in terms imposed on it. They contained no words purporting to bind the United States or in terms restricting the liability of the petitioner.

One acting as a private agent may be bound, notwithstanding his known agency, upon contracts which he executes in his own name. *Sprague* v. *Rosenbaum*, 38 Fed. 386; *Guernsey* v. *Cook*, 117 Mass. 548; *Brown* v. *Bradlee*, 156 Mass. 28; *Sadler* v. *Young*, 78 N. J. L. 594; *McCauley* v. *Ridgewood Trust Co.*, 81 N. J. L. 86; *Jones* v. *Gould*, 200 N. Y. 18. See *Worthington* v. *Cowles*, 112 Mass. 30; *Kean* v. *Davis*, 20 N. J. L. 425; *Cream City Glass Co.* v. *Friedlander*, 84 Wis. 53. Compare *Whitney* v. *Wyman*, 101 U. S. 392; *Post* v. *Pearson*, 108 U. S. 418. The only question now presented is whether the quasi-public character of the Fleet Corporation and the duties imposed upon it as an agency of the United States by Acts of Congress and Executive Orders, described and considered in earlier opinions of this Court, require a different conclusion with respect to its contracts. Shipping Act of September 7, 1916, c. 431, 39 Stat. 728, 730-732; Urgent Deficiency Act of 1917, *supra*; Merchant Marine Act of June 5, 1920, c. 250, 41 Stat. 988; Executive Orders No. 2664, July 11, 1917, No. 2888, January 18, 1918, No. 3018, December 3, 1918, No. 3145, August 11, 1919, and see *The Lake Monroe*, 250 U. S. 246; *United States* v. *Strang*, 254 U. S. 491; *Sloan Shipyards* v. *Fleet Corporation*, 258 U. S. 549; *Skinner & Eddy Corporation* v. *McCarl*, 275 U. S. 1; *Emergency Fleet Corporation* v. *Western Union*, 275 U. S. 415, 421.

The petitioner contends that there is a strong presumption, which is here controlling, that a public officer or agent is not to be deemed bound as an individual upon his contracts made in behalf of the government in the performance of a public duty, since no one participating in such a contract would be justified in assuming, in the absence of a clearly expressed intention otherwise, that the officer intends to bind himself to defray public expense from his private purse. *Parks* v. *Ross*, 11 How. 361; *Hodgson* v. *Dexter Company*, 1 Cranch. 345; *Sheets* v. *Selden's Lessee*, 2 Wall. 177; see *District of Columbia* v. *Camden Iron Works*, 181 U. S. 453, 459.

But we need not decide the point or attempt to draw the line where that presumption may be overcome by language of the written contract which falls short of an explicit limitation of the personal liability of the agent. See *Hodgson* v. *Dexter*, *supra*, 364. For in the present case the agent is not an individual and its liability does not involve any expenditure of private funds for the

satisfaction of public obligations. Its entire capital stock is government owned. Its funds and property were furnished to it by the government. They and government indemnity are alone the sources from which its obligations will be defrayed.

It was created as a government agency to construct a fleet of vessels to meet a wartime emergency. It was in order better to fulfill that purpose that Congress chose an instrument having the power to contract, as well as all the other powers of a private corporation, but with its every action government controlled and all its assets supplied from government sources. The advantages of resorting to such powers in meeting the national emergency were urged as grounds for the choice of this particular form of agency, when the Urgent Deficiency bill was pending in Congress. See remarks of Senator Underwood, reporting the bill for the Senate Conferees, 55 Cong. Rec. 65th Cong., p. 3549; see *The Lake Monroe*, *supra*, p. 254, *Skinner & Eddy Corporation* v. *McCarl*, *supra*, p. 8. There is thus no basis for presuming that the Fleet Corporation is not to be deemed bound by the contracts into which it enters merely because it is acting as such an agency, and its liability as measured by their terms is not to be curtailed by the presumption which, it is urged, may be indulged in favor of an individual acting for the government.

That is the effect of the decision in *Astoria Marine Works* v. *United States Shipping Board Emergency Fleet Corporation*, 258 U. S. 549, 569. It was there held that suit might be maintained against the Fleet Corporation in a district court upon a contract in form and in manner of execution like those presently involved and where, as here the Fleet Corporation was described in the contract as "representing the United States of America". It is true, as the petitioner argues, that the precise question at issue was one of jurisdiction of the district court to entertain the suit rather than the Court of Claims, as one against the Government. But the jurisdiction was sustained on the ground that the Fleet Corporation was bound by its contract, even though it acted as an agency of the United States and so was subject to the suit upon it in the District Court. The court said (p. 569): "The whole frame of the instrument [the contract] seems to us plainly to recognize the corporation as the immediate party to the contract. . . . If we are right in this, further reasoning seems to us

unnecessary to show that there was jurisdiction of the suit. The fact that the corporation was formed under the general laws of the District of Columbia is persuasive, even standing alone, that it was expected to contract and to stand suit in its own person, whatever indemnities might be furnished by the United States." See *United States* v. *Wood*, 290 Fed. 115, 263 U. S. 680.

Petitioner also insists that even though the Fleet Corporation is bound by its contracts, the liability has been undertaken by the United States by §§ 2(b) (1), 2(b) (2) and 2(c) of the Merchant Marine Act of June 5, 1920, 41 Stat. 988, which now affords the exclusive remedy for the enforcement of the liability. This legislation repealed, with certain specified exceptions, the Emergency Shipping Fund provisions of the Urgent Deficiencies Act of June, 1917, as amended. Section 2(b) (1) directed that "all contracts or agreements" previously made under the Emergency Shipping Fund legislation "be assumed and carried out by the United States Shipping Board." But § 2(b) (2) saved all rights or remedies accruing as a result of such contracts and provided that they "might be exercised in like manner, subject to the provisions of subdivision (c)" of § 2. Subdivision (c) directed the Board to settle "all matters arising out of or incident to the exercise by or through the President of any of the powers or duties imposed upon the President" by the earlier legislation "and for this purpose the Board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation". It further provided that "Any person dissatisfied with any decision of the Board shall have the same right to sue the United States as they would have had had the decision been made by the President of the United States under the acts" repealed.

Petitioner points to no provisions of earlier acts giving to the President power to determine the amount due a contractor under a contract made by the Fleet Corporation, and respondent asserts that the powers of the President referred to in (c) are limited to the award of just compensation. But even if we assume that his powers were not so limited, we think subsection (c) at most, gave an additional remedy against the United States and not a substitute for existing remedies upon contract liabilities expressly preserved by subdivision (b) (2). The words of subdivision (b) (2), saving all existing remedies which "may be exercised and enforced in like

manner, subject to the provisions of subdivision (c)", must be taken to preserve the old remedies and to give the new one if the matter is one which the Board is authorized to settle by (c). Any other construction would nullify the saving clause of (b) (2), for if the "decision of the Board" as used in the proviso of (c) embraces settlements of all matters arising out of contracts which, by paragraph (b) (1), it was directed to carry out and in the event that its decision is not accepted, the exclusive remedy is by suit against the United States, then none of the remedies accruing under such contracts and in terms saved by paragraph 2, were preserved.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.